

## NOTICE

A meeting of the City of Evansville Plan Commission will be held on the date and time stated below at City Hall, 31 South Madison Street, Evansville, Wisconsin 53536. Notice is further given that members of the City Council might be in attendance. Requests for persons with disabilities who need assistance to participate in this meeting should be made by calling City Hall: (608)-882-2266 with as much advanced notice as possible. Please silence cell phones and electronic devices during the meeting.

City of Evansville **Plan Commission**  
Regular Meeting  
Tuesday, November 4, 2019, 6:00 p.m.  
City Hall (Third Floor), 31 South Madison Street

## AGENDA

1. Call to Order
2. Roll Call
3. Motion to Approve Agenda
4. Motion to waive the reading of the minutes from the October 1, 2019 Meeting and approve them as printed.
5. Civility Reminder
6. Citizen appearances other than agenda items listed
7. New Business
  - A. Public Hearing and Review of Land Division Application LD-2019-10 for a Two Family Twin Lot on Parcel 6-27-533.510 (Tax ID 222004701510) located at 522/524 Stonewood Court.
    - i. Review Staff Report and Applicant Comments
    - ii. Public Hearing
    - iii. Plan Commissioner Questions and Comments
    - iv. Motion with Conditions
  - B. Public Hearing and Review of Land Division Application LD-2019-10 for a Two Family Twin Lot on Parcel 6-27-533.513 (Tax ID 222004701513) located at 546/548 Stonewood Court.
    - v. Review Staff Report and Applicant Comments
    - vi. Public Hearing
    - vii. Plan Commissioner Questions and Comments
    - viii. Motion with Conditions
  - C. Discussion and Possible Motion to approve Westfield Meadows 1<sup>st</sup> Addition Developers Agreement Draft.
  - D. Motion to approve revised landscape plan for middle school
  - E. Motion to accept HVAC sound report with the conditions sound insulation is installed around compressor equipment and a visual wall and sound barrier installed around all HVAC equipment.
8. Other Business

9. Education and News: Missing Middle of Housing

10. Motion to Approve Next Meeting Date of Monday, December 9 at 6:00pm

11. Motion to Adjourn

*-Mayor Bill Hurtley, Plan Commission Chair*

*These minutes are not official until approved by the City of Evansville Plan Commission.*

**City of Evansville Plan Commission  
Regular Meeting  
October 1, 2019, 6:00 p.m.  
City Hall (Third Floor), 31 South Madison Street**

**MINUTES**

**1. Call to Order** at 6:00 pm.

**2. Roll Call:**

<b>Members</b>	<b>Present/Absent</b>	<b>Others Present</b>
Mayor Bill Hurtley	P	Community Development Director Jason Sergeant
Aldersperson Rick Cole	P	Andy Phillips, applicant
Aldersperson Erika Stuart	A	Other members of the public
Bill Hammann	P	
John Gishnock	P	
Mike Scarmon	P	
Susan Becker	P	

**3. Motion to approve the agenda, by Hammann, seconded by Cole. Approved unanimously.**

**4. Motion to waive the reading of the minutes from the September 3, 2019 Meeting and approve them as printed by Cole, seconded by Hammann. Approved unanimously.**

*(Becker Arrived)*

**5. Civility Reminder.** Hurtley noted the City’s commitment to civil discourse.

**6. Citizen appearances other than agenda items listed.** None

**7. New Business**

**A. Public Hearing and Review of Land Division Application LD-2019-08 for an extraterritorial land division on Parcel 6-20-171 (Tax ID 040031009) located at 16326 W County Road C.**

- i. Review Staff Report and Applicant Comments.** Sergeant shared his staff report.
- ii. Public Hearing.** Hurtley opened the hearing at 6:07pm, closing it at 6:08pm with no comments from the public.
- iii. Plan Commissioner Questions and Comments.** None
- iv. Motion with Conditions.** Motion to recommend to Common Council approval of the extraterritorial land division to divide parcel 6-20-171 into two lots located at 16326 W County Road C, finding that the application is in the public interest and meets the objectives contained within Section 110-102(g) of city ordinances, with the condition the

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**Final CSM is recorded with Rock County Register of Deeds. Motion by Hamman, seconded by Becker. Approved Unanimously.**

- B. Public Hearing and Review of Land Division Application LD-2019-09 for an extraterritorial land division on Parcel 6-20-235 (Tax ID 040044005) located at 16415 W County Road C.**
- i. **Review Staff Report and Applicant Comments.** Sergeant shared his staff report.
  - ii. **Public Hearing.** Hurtley opened the hearing at 6:14pm, closing it at 6:15pm with no comments from the public.
  - iii. **Plan Commissioner Questions and Comments.** None
  - iv. **Motion with Conditions.** **Motion to recommend to Common Council approval of the extraterritorial land division to divide parcel 6-20-235 into two lots located at 16415 W County Road C, finding that the application is in the public interest and meets the objectives contained within Section 110-102(g) of city ordinances, with the condition the Final CSM is recorded with Rock County Register of Deeds. Motion by Hamman, seconded by Cole. Approved Unanimously.**
- C. Public Hearing and Review of Land Division Application LD-2019-10 for a Two Family Twin Lot on Parcel 6-27-316.165 (Tax ID 222009235) located at 630 Windsor Lane and 42 Gunther Drive.**
- i. **Review Staff Report and Applicant Comments.** Sergeant shared his staff report.
  - ii. **Public Hearing.** Hurtley opened the hearing at 6:16pm, closing it at 6:17pm with no comments from the public.
  - iii. **Plan Commissioner Questions and Comments.** Question regarding street trees being needed if they already exist. Sergeant said street trees are part of the permit process, if they don't exist, they would need to be planted.
  - iv. **Motion with Conditions.** **Motion to recommend to Common Council approval of certified survey map to divide parcel 6-27-316.165 (Tax ID 222009235) into a Two-family twin lot located at 630 Windsor Lane and 42 Gunther Drive, finding that the application is in the public interest and meets the objectives contained within Section 110-102(g) of city ordinances, with the conditions Rezone Application RZ-2019-04 is approved by Common Council and the final CSM and joint cross access easement agreement are recorded with Rock County Register of Deeds. Motion by Hamman, seconded by Becker. Approved Unanimously.**
- D. Public Hearing and Review of Rezoning Application RZ-2019-04 for Parcel 6-27-316.165 (Tax ID 222009235) located at 630 Windsor Lane and 42 Gunther Drive.**
- i. **Review Staff Report and Applicant Comments.** Sergeant shared his staff report.
  - ii. **Public Hearing.** Hurtley opened the hearing at 6:18pm, closing it at 6:19pm with no comments from the public.
  - iii. **Plan Commissioner Questions and Comments.** None
- Motion with Conditions.** **Motion to recommend Common Council approve Ordinance 2019-03, Rezoning Parcel 6-27-316.165 from Residential District One (R-1) to Residential District Two (R-2) Zoning, finding that the public benefits of the proposed rezoning outweigh any and all potential adverse impacts of the proposed rezoning, as identified in Section 130-174(3)a-c of City ordinance. Motion by Hamman, seconded by Cole. Approved Unanimously.**

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**E. Public hearing concerning Application A-2019-01 and Ordinance 2019-05, Petition for Annexation of Parcel 6-20-302.1A located at 6939 N State Road 213.**

- i. **Initial Staff and Applicant Comments.** Sergeant shared his staff report.
- ii. **Pre-Annexation agreement review.** Sergeant summarized the agreement.
- iii. **Public Hearing.** Hurtley opened the hearing at 6:21pm, closing it at 6:22pm with no comments from the public.
- iv. **Plan Commissioner Questions and Comments.** None
- v. **Motion with conditions to recommend to Common Council the adoption of ordinance 2019-05 and annexation agreement.** *Finding the annexation is consistent with the Comprehensive Plan, The Plan Commission recommends Common Council approval of Ordinance 2019-05 and the annexation agreement, annexing territory to the City of Evansville, with the following conditions:*

1. *DOA approves annexation*
2. *The applicant signs and accepts the Annexation agreement*

*Motion by Hamman, seconded by Gishnock. Approved Unanimously.*

**F. Public Hearing and Review of Rezone Application RZ-2019-02 and Ordinance 2019-06 to Change the Zoning from (Temporary Residential) A to B-3 on annexed Parcel 6-20-302.1A located at 6939 N State Road 213.**

- i. **Initial staff and applicant comments.** Sergeant shared his staff report.
- ii. **Public Hearing.** Hurtley opened the hearing at 6:32pm, closing it at 6:33pm with no comments from the public.
- iii. **Plan Commissioner questions and comments.** None
- iv. **Motion with Conditions.** *The Plan Commission recommends the City Council approve Ordinance 2019-06, Rezoning Territory from Temporary Agriculture(A) to Community Business District (B-3) Zoning, finding that the public benefits of the proposed rezoning outweigh any and all potential adverse impacts of the proposed rezoning, as identified in Section 130-174(3)a-c of City ordinance, with the following conditions:*

1. *Annexation Application A-2019-01 and Ordinance 2019-05 is approved by Common Council.*
2. *Conditions of Approval for Application A-2019-01 and annexation agreement are met.*

*Motion by Hamman, seconded by Cole. Approved Unanimously.*

*(Stuart Arrived)*

**G. Public Hearing and Review of Land Division Application LD-2019-07 for subdivision re-plot of Parcels 6-27-559.5043, 6-27-559.5050, and associated portions of Windmill Ridge and Westfield Meadows Subdivisions located near Porter Road and 7th Street**

- i. **Review Staff Report and Applicant Comments.** Sergeant shared his staff report.
- ii. **Review Land Division Agreement.** Sergeant summarized the staff report
- iii. **Public Hearing.** Hurtley opened the hearing at 6:59pm, closing it at 7:00pm with no comments from the public.

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- iv. **Plan Commissioner Questions and Comments.** Commission discussed wanting to see some rough civil engineering layouts of the subdivision and addressing concerns for front loading garages. Commission would also like to see changes made as suggested by staff.
- v. **Possible Motion with Conditions.** *Motion to recommend to Common Council approval of the preliminary subdivision map for Westfield Meadows 1st Addition to divide parcels 6-27-559.5043 and 6-27-559, and other adjacent portions of Windmill Ridge and Westfield Meadows Subdivisions, finding that the application is in the public interest and meets the objectives contained within Section 110-102(g) of city ordinances, with the conditions:*
  - 1. *Developer executes Developers Agreement with City*
  - 2. *A Final subdivision map is approved by Plan Commission reflecting modifications to outlots*

*Motion by Hamman, seconded by Cole. Approved Unanimously.*

**H. Public Hearing and Review of Rezoning Application RZ-2019-03 (submitted in conjunction with Application LD-2019-07) for rezoning Parcels 6-27-559.5043, 6-27-559.5050 located near Porter Road and 7th Street**

- i. **Review Staff Report and Applicant Comments.** Sergeant summarized the staff report.
- ii. **Public Hearing.** Hurtley opened the hearing at 7:14pm, closing it at 7:15pm with no comments from the public.
- iii. **Plan Commissioner Questions and Comments.** Discussion also centered around the giving up acres of commercial land as a pretty big compromise on the city's end.
- iv. **Possible Motion with Conditions.** *The Plan Commission recommends the City Council approve Ordinance 2019-07, Rezoning Territory from in the newly created Westfield Meadows 1st Addition Subdivision to B-1 and R-2, finding that the public benefits of the proposed rezoning outweigh any and all potential adverse impacts of the proposed rezoning, as identified in Section 130-174(3)a-c of City ordinance with the following conditions:*
  - 1. *Final Land Division application is approved by Common Council*
  - 2. *Developers Agreement is signed by Applicants*

*Motion by Hamman, seconded by Cole. Approved Unanimously.*

**I. HVAC sound information for middle school.** Commission discussed sound report. Cole offered to evaluate it with staff, commission would like to know if sound fencing or a wall are proposed before taking action.

**J. Motion to Approve Regular 2020 Meeting Dates by Hamman, seconded by Cole. Approved Unanimously.**

**8. Other Business.** None

**9. Education and News: Gazette Article.** Sergeant shared an article about Palace Meets grand opening in downtown.

**10. Next Meeting Dates:** Tuesday, November 4, 2019 at 6:00pm

**11. Motion to Adjourn by Hamman, seconded by Cole. Approved Unanimously.**

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**APPLICATION FOR PRELIMINARY AND FINAL LAND DIVISION – STAFF REPORT**

**Application No.:** LD-2019-11 **Applicant:** Hurley Homes

Parcel 6-27-533.510, 522/524 Stonewood Ct

**November 4, 2019**

Prepared by: Jason Sergeant, Community Development Director

Direct questions and comments to: [Jason.sergeant@ci.evansville.wi.gov](mailto:Jason.sergeant@ci.evansville.wi.gov) or 608-882-2285

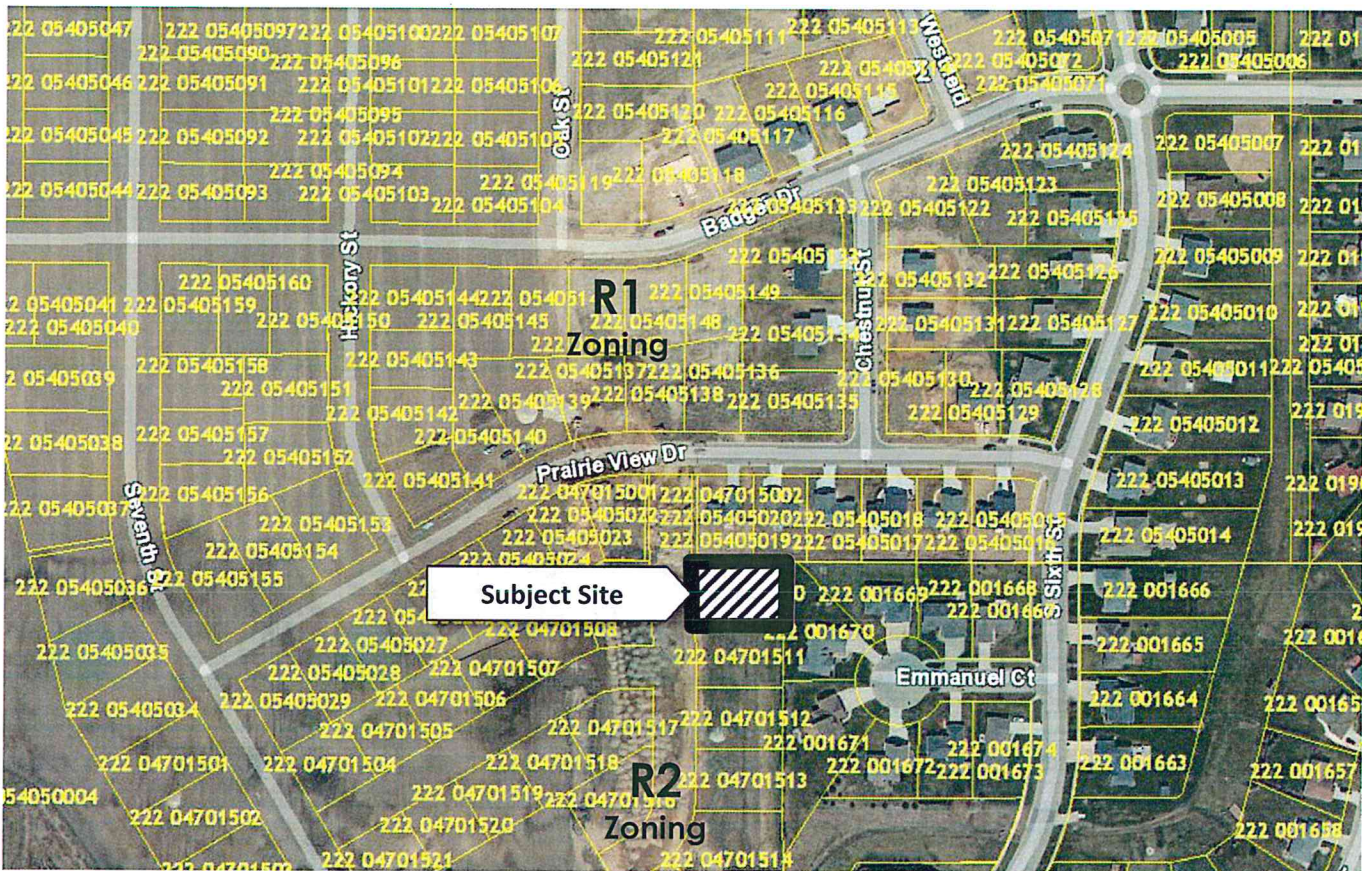


Figure 1 Location Map

**Description of request:** An application for a preliminary and final land division to create a Two Family Twin Lot on parcel 6-27-533.510 (Tax ID 22204701510) at 522/524 Stonewood Court has been submitted for consideration by the Plan Commission. Municipal Services has reviewed the application and recommended approval.

**Existing and Proposed Uses:** The existing lot has a duplex home constructed and is zoned for residential use (R-2). The newly created Two Family Twin parcels would allow each side of the duplex to be independently owner-occupied.

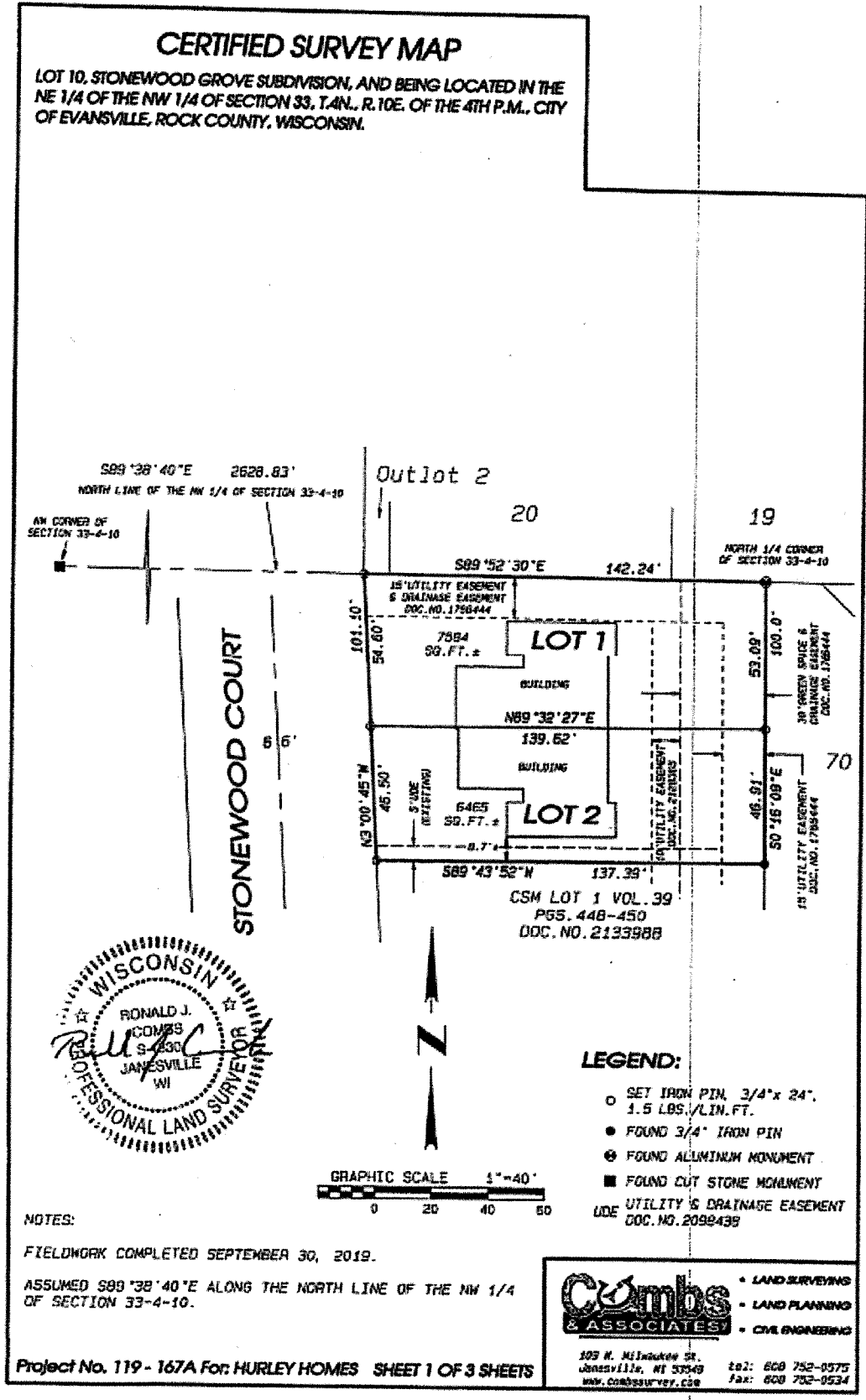


Figure 2 Final CSM

**Consistency with the City of Evansville Comprehensive Plan and Municipal Code:** The proposed land division and land uses are thoroughly consistent with the Future Land Use Map of the Comprehensive Plan. This would promote infill housing, walkability, and density.

The proposal complies with the design standards and environmental considerations as set forth in the Land Division Ordinance.

**Staff Recommended Motion:** *Motion to recommend to Common Council approval of certified survey map to divide parcel 6-27-533.510 (Tax ID 22204701510) into a Two-family twin lot located at 522/524 Stonewood Court, finding that the application is in the public interest and meets the objectives contained within Section 110-102(g) of city ordinances, with the conditions:*

- 1. Applicant provides USPS approval of proposed outlots for centralized delivery boxes.*
- 2. Final CSM and joint cross access easement agreement is recorded with Rock County Register of Deeds.*



## JOINT CROSS ACCESS AND MAINTENANCE AGREEMENT

THIS AGREEMENT, is made this 24<sup>th</sup> day of October, 2019 by HURLEY HOMES, LLC, ("Owner").

WHEREAS, Hurley Homes, LLC is the owner of the real estate located at 522 and 524 Stonewood Court, Evansville, Wisconsin, and legally described as follows: Lot 10, Stonewood Grove Subdivision, City of Evansville, Rock County, Wisconsin, (the "Property"), on which a side-by-side zero lot line duplex is located, and

WHEREAS, Owner wishes to establish parameters with regard to the side-by-side zero lot line duplex, and

NOW, THEREFORE, in consideration of the mutual benefits to be obtained, it is agreed as follows:

1. There is a joint wall separating the zero lot line duplexes located on the property described above.

2. The owners of each unit ("Unit Owners"), are equally responsible for the maintenance of the common wall and roof area where the common wall attaches. The cost of maintaining the common wall and roof area where the common wall attaches shall be borne equally by the Unit Owners on either side of said shared wall.

3. The Unit Owners are equally responsible to maintain the joint driveway from Stonewood Court to the garage for their respective unit and agree that they will not block or park in front of the adjoining owner's unit. The cost of maintaining the joint driveway shall be borne equally between the Unit Owners. Neither Unit Owner shall alter or change the joint driveway in any manner, and it shall remain in the same location as when originally erected.

4. In the event of damage or destruction to the common wall, roof where the common wall attaches, and/ or joint driveway from any cause, other than the negligence or intentional act of either party hereto, the Unit Owners shall repair or rebuild said items. The cost of such repair or rebuilding shall be borne equally by the Unit Owners.

5. If either Unit Owner's negligence or intentional act shall cause damage to or destruction of the common wall or joint driveway, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his/her share, or all of such costs in case of negligence or intentional act, the other party may have such item repaired or restored and shall be entitled to have a contractor lien on the lot and dwelling unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs together with interest at the maximum rate allowable.

6. The Unit Owners agree that there shall be a perpetual eight-foot maintenance easement, four-feet on each side of the zero-lot line side property line dividing the property which

easement shall allow access for normal maintenance and repair of the Unit Owner's respective unit, the common wall, roof where the common wall attaches, and joint driveway.

7. The Unit Owners shall keep all exterior walls of their respective units in good condition and repair at their sole cost and expense. No Unit Owner shall do or permit to be done any act or thing that would tend to depreciate the value of the building (i.e. variance in design, colors, roofing, etc.).

8. The Unit Owners may install a fence. Any fence between the two units may be placed on the zero-lot line with both Units being equally responsible for the construction and maintenance of the fence.

9. The construction of a detached single-family home is restricted in the event either or both sides of the twin dwelling are destroyed.

10. This Joint Cross Access and Maintenance Agreement shall run with the land and shall not be terminated, amended or otherwise altered without the approval of the Evansville City Council.

11. Any dispute arising with respect to this Agreement, its making or validity, its interpretation, or its breach shall be settled by arbitration in Rock County, Wisconsin, by a single arbitrator mutually agreed to by the disputing parties pursuant to the then obtaining rules of the American Arbitration Association. Such arbitration shall be the sole and exclusive remedy for such disputes except as otherwise provided in this Agreement. Any award rendered shall be final and conclusive upon the parties, and a judgment may be entered in any court having jurisdiction. In any proceeding with respect to any dispute arising under or to collect any benefits due under this Agreement, the prevailing party in the proceeding shall be entitled to recover the costs of the proceeding and reasonable attorney fees from the other party.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

13. No modification, termination or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

15. This Agreement shall be binding on the parties hereto, their heirs, successors, personal representatives, and assigns.

EXECUTED as set forth below.

Hurley Homes, LLC, by:

\_\_\_\_\_  
Noah A. Hurley, Member

\_\_\_\_\_  
Rebecca A. Hurley, Member

STATE OF WISCONSIN)  
COUNTY OF ROCK )ss

Personally came before me this \_\_\_\_ day of October, 2019, the above named Noah A. Hurley and Rebecca A. Hurley, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of Hurley Homes, LLC.

\_\_\_\_\_  
Notary Public, Rock County, Wis.  
My Commission \_\_\_\_\_.

This Instrument was drafted by  
Attorney Walter Shannon  
State Bar No. 1055751  
Shannon Law Office, LLC  
104 West Main St.  
Evansville, WI 53536







### APPLICATION FOR PRELIMINARY AND FINAL LAND DIVISION – STAFF REPORT

Application No.: LD-2019-12 Applicant: Hurley Homes

Parcel 6-27-533.513, 546/548 Stonewood Ct

November 4, 2019

Prepared by: Jason Sergeant, Community Development Director

Direct questions and comments to: [Jason.sergeant@ci.evansville.wi.gov](mailto:Jason.sergeant@ci.evansville.wi.gov) or 608-882-2285

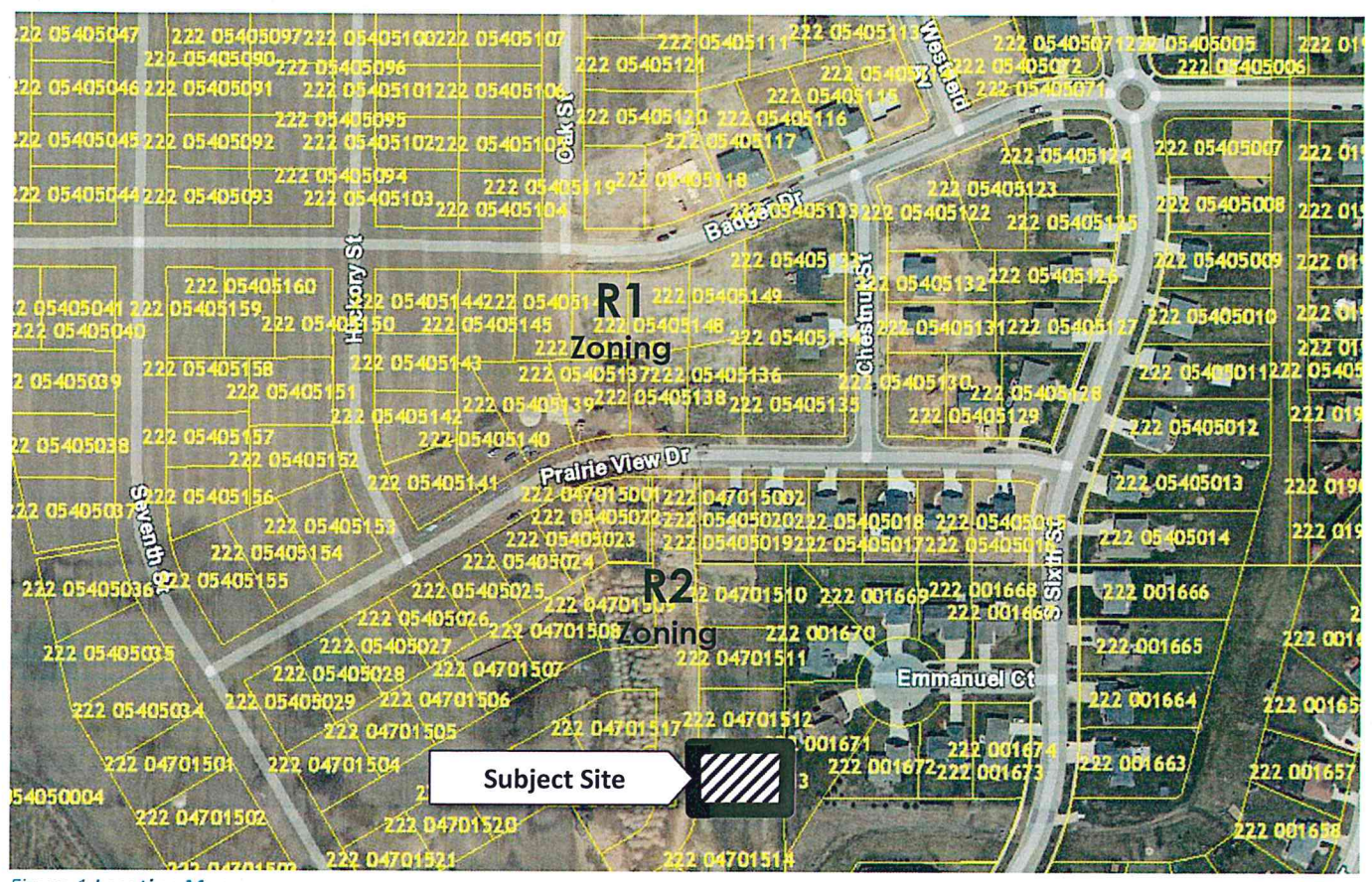


Figure 1 Location Map

**Description of request:** An application for a preliminary and final land division to create a Two Family Twin Lot on parcel 6-27-533.513 (Tax ID 22204701513) at 546/548 Stonewood Court has been submitted for consideration by the Plan Commission. Municipal Services has reviewed the application and recommended approval.

**Existing and Proposed Uses:** The existing lot has a duplex home constructed and is zoned for residential use (R-2). The newly created Two Family Twin parcels would allow each side of the duplex to be independently owner-occupied.

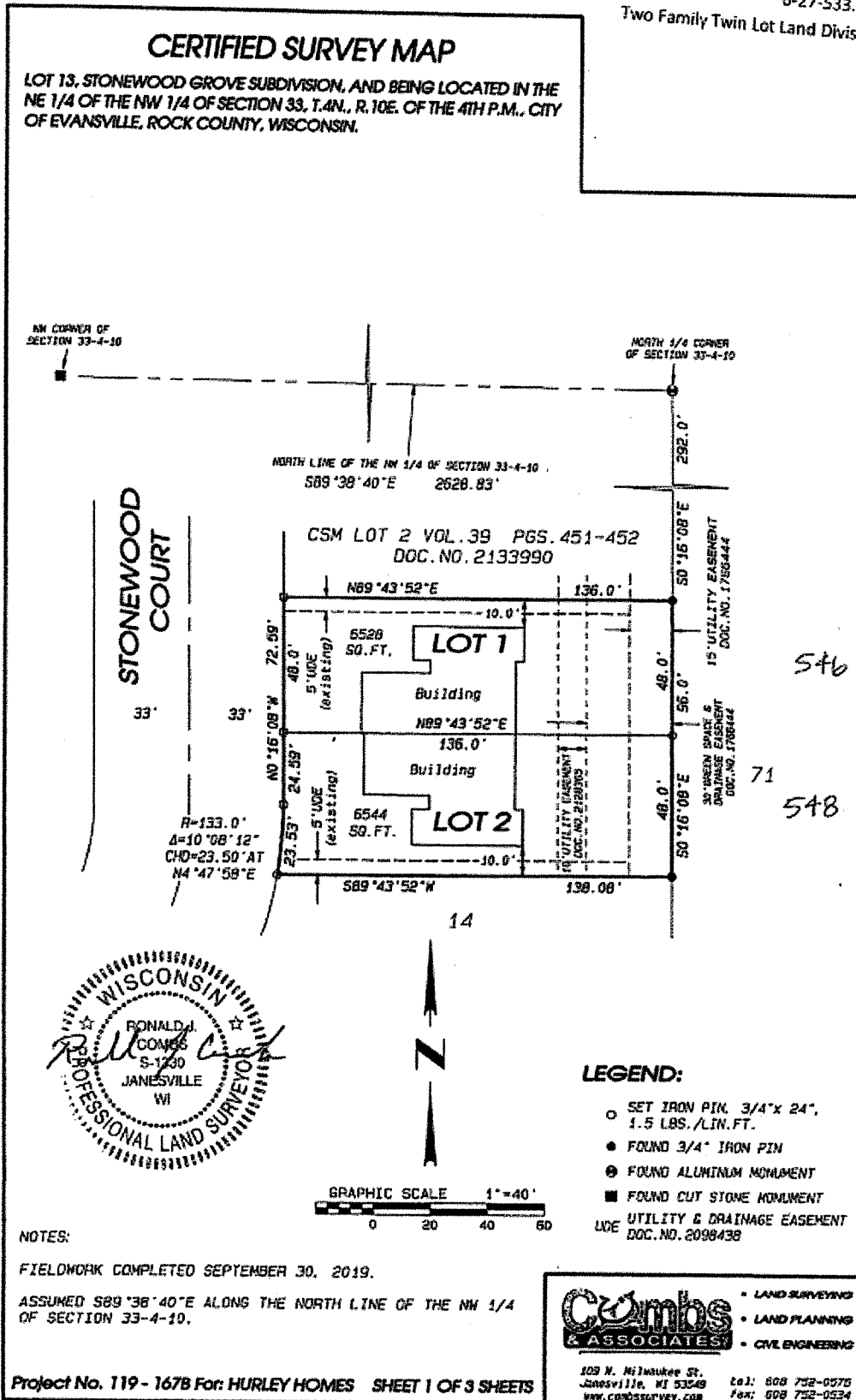
LD-2019-12

6-27-533.512

Two Family Twin Lot Land Division

### CERTIFIED SURVEY MAP

LOT 13, STONEWOOD GROVE SUBDIVISION, AND BEING LOCATED IN THE NE 1/4 OF THE NW 1/4 OF SECTION 33, T.4N., R. 10E. OF THE 4TH P.M., CITY OF EVANSVILLE, ROCK COUNTY, WISCONSIN.



576  
71  
548

**NOTES:**

FIELDWORK COMPLETED SEPTEMBER 30, 2019.  
ASSUMED S89°38'40"E ALONG THE NORTH LINE OF THE NW 1/4 OF SECTION 33-4-10.

Project No. 119 - 167B For: HURLEY HOMES SHEET 1 OF 3 SHEETS

**Combs & Associates**

- LAND SURVEYING
- LAND PLANNING
- CIVIL ENGINEERING

109 N. Milwaukee St.  
Evansville, WI 53549  
www.combsurvey.com

tel: 800 752-0575  
fax: 808 752-0534

Figure 2 Final CSM

**Consistency with the City of Evansville Comprehensive Plan and Municipal Code:** The proposed land division and land uses are thoroughly consistent with the Future Land Use Map of the Comprehensive Plan. This would promote infill housing, walkability, and density.

The proposal complies with the design standards and environmental considerations as set forth in the Land Division Ordinance.

**Staff Recommended Motion:** *Motion to recommend to Common Council approval of certified survey map to divide parcel 6-27-533.513 (Tax ID 22204701513) into a Two-family twin lot located at 546/548 Stonewood Court, finding that the application is in the public interest and meets the objectives contained within Section 110-102(g) of city ordinances, with the conditions:*

- 1. Applicant provides USPS approval of proposed outlots for centralized delivery boxes.*
- 2. Final CSM and joint cross access easement agreement is recorded with Rock County Register of Deeds.*



**JOINT CROSS-ACCESS AND  
MAINTENANCE AGREEMENT**

Document Number

Document Title

In re: Lot 13, Stonewood Grove Subdivision, City of Evansville, Rock County,  
Wisconsin.

Recording Area

Name and Return Address

**Attorney Walter E. Shannon  
104 West Main St.  
Evansville, WI 53536**

**6-27-533.513 (222 04701513)**

Parcel Identification Number (PIN)

**THIS PAGE IS PART OF THIS LEGAL DOCUMENT – DO NOT REMOVE.**

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

WRDA Rev. 12/22/2010

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## JOINT CROSS ACCESS AND MAINTENANCE AGREEMENT

THIS AGREEMENT, is made this 24<sup>th</sup> day of October, 2019 by HURLEY HOMES, LLC, (“Owner”).

WHEREAS, Hurley Homes, LLC is the owner of the real estate located at 546 and 548 Stonewood Court, Evansville, Wisconsin, and legally described as follows: Lot 13, Stonewood Grove Subdivision, City of Evansville, Rock County, Wisconsin, (the “Property”), on which a side-by-side zero lot line duplex is located, and

WHEREAS, Owner wishes to establish parameters with regard to the side-by-side zero lot line duplex, and

NOW, THEREFORE, in consideration of the mutual benefits to be obtained, it is agreed as follows:

1. There is a joint wall separating the zero lot line duplexes located on the property described above.
2. The owners of each unit (“Unit Owners”), are equally responsible for the maintenance of the common wall and roof area where the common wall attaches. The cost of maintaining the common wall and roof area where the common wall attaches shall be borne equally by the Unit Owners on either side of said shared wall.
3. The Unit Owners are equally responsible to maintain the joint driveway from Stonewood Court to the garage for their respective unit and agree that they will not block or park in front of the adjoining owner's unit. The cost of maintaining the joint driveway shall be borne equally between the Unit Owners. Neither Unit Owner shall alter or change the joint driveway in any manner, and it shall remain in the same location as when originally erected.
4. In the event of damage or destruction to the common wall, roof where the common wall attaches, and/ or joint driveway from any cause, other than the negligence or intentional act of either party hereto, the Unit Owners shall repair or rebuild said items. The cost of such repair or rebuilding shall be borne equally by the Unit Owners.
5. If either Unit Owner's negligence or intentional act shall cause damage to or destruction of the common wall or joint driveway, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his/her share, or all of such costs in case of negligence or intentional act, the other party may have such item repaired or restored and shall be entitled to have a contractor lien on the lot and dwelling unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement costs together with interest at the maximum rate allowable.
6. The Unit Owners agree that there shall be a perpetual eight-foot maintenance easement, four-feet on each side of the zero-lot line side property line dividing the property which

easement shall allow access for normal maintenance and repair of the Unit Owner's respective unit, the common wall, roof where the common wall attaches, and joint driveway.

7. The Unit Owners shall keep all exterior walls of their respective units in good condition and repair at their sole cost and expense. No Unit Owner shall do or permit to be done any act or thing that would tend to depreciate the value of the building (i.e. variance in design, colors, roofing, etc.).

8. The Unit Owners may install a fence. Any fence between the two units may be placed on the zero-lot line with both Units being equally responsible for the construction and maintenance of the fence.

9. The construction of a detached single-family home is restricted in the event either or both sides of the twin dwelling are destroyed.

10. This Joint Cross Access and Maintenance Agreement shall run with the land and shall not be terminated, amended or otherwise altered without the approval of the Evansville City Council.

11. Any dispute arising with respect to this Agreement, its making or validity, its interpretation, or its breach shall be settled by arbitration in Rock County, Wisconsin, by a single arbitrator mutually agreed to by the disputing parties pursuant to the then obtaining rules of the American Arbitration Association. Such arbitration shall be the sole and exclusive remedy for such disputes except as otherwise provided in this Agreement. Any award rendered shall be final and conclusive upon the parties, and a judgment may be entered in any court having jurisdiction. In any proceeding with respect to any dispute arising under or to collect any benefits due under this Agreement, the prevailing party in the proceeding shall be entitled to recover the costs of the proceeding and reasonable attorney fees from the other party.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

13. No modification, termination or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

15. This Agreement shall be binding on the parties hereto, their heirs, successors, personal representatives, and assigns.

EXECUTED as set forth below.

Hurley Homes, LLC, by:

\_\_\_\_\_  
Noah A. Hurley, Member

\_\_\_\_\_  
Rebecca A. Hurley, Member

STATE OF WISCONSIN)  
COUNTY OF ROCK )ss

Personally came before me this \_\_\_\_ day of October, 2019, the above named Noah A. Hurley and Rebecca A. Hurley, to me known to be the persons who executed the foregoing instrument and acknowledged the same on behalf of Hurley Homes, LLC.

\_\_\_\_\_  
Notary Public, Rock County, Wis.  
My Commission \_\_\_\_\_.

This Instrument was drafted by  
Attorney Walter Shannon  
State Bar No. 1055751  
Shannon Law Office, LLC  
104 West Main St.  
Evansville, WI 53536



**FINAL LAND DIVIDER’S AGREEMENT – Westfield Meadows 1<sup>st</sup> Addition**

This Agreement made this \_\_\_\_ day of \_\_\_\_\_, 2020, between Evansville Development Group, hereinafter called the “Developer,” and the City of Evansville, a municipal corporation of the State of Wisconsin, located in Rock County, hereinafter called the “City.”

WHEREAS, Developer owns approximately \_\_\_\_ acres of land in the City of Evansville that is legally described in Appendix A;

WHEREAS, the above-described land is presently zoned B-1, R-2, and R-3;

WHEREAS, Developer desires to subdivide and develop the above-described land for residential purposes to be known as Westfield Meadows 1<sup>st</sup> Addition Subdivision, hereinafter called the “Subdivision”, which is presently zoned B-1, R-2, and R-3;

WHEREAS, on October 1, 2019, the City’s Plan Commission recommended to the City’s Common Council approval of a preliminary plat for the Subdivision subject to certain conditions, and on \_\_\_\_\_, 2019, the Common Council approved a preliminary plat for the Subdivision subject to certain conditions;

WHEREAS, the Plan Commission and the City Council have reviewed this final land divider’s Agreement for the Subdivision;

WHEREAS, the parties believe it to be in their mutual best interest to enter a written development agreement, hereinafter called the “Agreement,” which sets forth the terms of understanding concerning said Subdivision.

WHEREAS, all elements of the “Westfield Meadows Land Dividers Agreement” and any amendments are incorporated into this agreement. If any term of this Agreement shall conflict with terms in the “Westfield Meadows Land Dividers Agreement” for any reason, terms in this agreement shall govern.

NOW, THEREFORE, in consideration of the recitals, the terms and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I. Land; General Conditions**

- A. Easements. Developer hereby grants a temporary easement over all areas not platted as public to the City for access and inspection during construction of the Public Improvements described in Article III.
- B. Fee In Lieu of Parkland. The Developer’s obligations for the dedication of parkland and/or fees in lieu of Parkland have been satisfied by the dedication of an outlot for park access and an outlot for pedestrian access. Final Land Divider’s Agreement and any addendums for Westfield Meadows which is attached hereto as Exhibit 2 and incorporated by a referenced in its entirety herein. If any term of this Agreement shall

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conflict with terms in the "Westfield Meadows Land Dividers Agreement" for any reason, terms in this agreement shall govern.

- C. Survey Monuments. Developer shall properly place and install all survey or other monuments required by statute or ordinance prior to any particular phase being accepted. Internal survey monuments shall be installed after the Public Improvements described in Article III are completed.
- D. Deed Restrictions. Developer shall execute and record deed restrictions in a form as will be separately approved by the City prior to the sale of any lots in the subdivision. Such restrictions shall include, but are not limited to, covenants as follows: that there shall be no further division or subdivision of lots unless in accordance with municipal and zoning ordinances, within the Subdivision; that there shall be no residential development on outlots without the consent of the City and that this final land divider's Agreement has been entered into between Developer and the City, a copy of which is on file in the City Clerk's office.
- E. Advertising Signs. Developer agrees that any temporary signs placed anywhere in the Subdivision to advertise the Subdivision shall comply with Article X of Chapter 130 of the Evansville Municipal Code.
- F. Construction Trailers. Small construction trailers may be located at the Subdivision on a temporary basis during the construction of the improvements described in Article III of this Agreement.
- G. Grading, Erosion and Silt Control.
  - 1. Developer agrees to submit a plan for the maintenance and disposition of on-site topsoil.
  - 2. Prior to commencing site grading, Developer shall submit for approval by the City Engineer a grading plan. The plan shall provide sufficient control of the site to prevent siltation downstream from the site. Developer shall provide to the City written certification from the Developer's engineer that the plan, in its execution, shall meet all federal, state, county and local regulations, guidelines, specifications, laws and ordinances, including provision for notification of land disturbance to the State of Wisconsin Department of Natural Resources.
  - 3. Developer shall cause all grading, excavation, open cuts, and site slopes and other land surface disturbances to be mulched, seeded, sodded or otherwise protected so that erosion, siltation, sedimentation and washing are prevented in accordance with the plans and specifications on file with the City Clerk's office.
  - 4. Developer shall immediately place effective erosion control procedures along downslope areas and along sideslope areas as required to prevent or reduce erosion where erosion during construction will result in a loss of soil to waters of the state, public sewer inlets or off-site. During the period of construction at a site, all erosion control procedures necessary to

meet the performance standards of Wisconsin Administrative Code, Commerce, Section 21.125, shall be properly implemented, installed and maintained by Developer, building permit applicants, and the subsequent landowners. If erosion occurs after building construction activities have ceased, some or all of the erosion control procedures shall be maintained by Developer until the site has been stabilized.

5. Developer shall restore all disturbed areas and re-grade any areas not allowing the flow of surface water as specified in the grading plan.

H. Applicability. The requirements of this Article I apply to the construction and installation of sanitary sewers, water mains, public streets (including signage), private streets, electrical systems, landscaping and storm water management facilities and shall remain in effect until the acceptance, by resolution adopted by the Common Council, of all Public Improvements required by this Agreement.

## ARTICLE II. Phases and Development.

- A. Construction of Public Improvements. Developer shall complete installation of the Public Improvements described in Article III in three phases, or in logical sub-phases of not less than six lots, if the Developer notifies the city at least 30 days in advance and obtains approval of the same. Developer shall install as part of a phase or sub-phase any Public Improvements which are not physically located within said phase or sub-phase but are necessary to serve the lots within it.
- B. Phases Identified. Phasing for the Subdivision shall be as follows:
  1. Phase I shall be comprised of Lots \_\_ through \_\_.
  2. Phase II shall be comprised of Lots \_\_ through \_\_.
  3. Phase III shall be comprised of Lots \_\_ through \_\_.
- C. Timing of Phases. Developer may begin the installation of the Public Improvements described in Article III for each phase of the Subdivision as follows:
  1. For Phase I, as soon as Developer has obtained all necessary approvals of the Plans and Specifications described in Article III and has filed with the City Clerk all required documents, including but not limited to the irrevocable letter of credit referenced in Article IV, Section C and as-built drawings have been submitted for completed phases of Westfield Meadows.
  2. For Phase II, after the latter of completion of either Phase I, or completion of the first lift of asphalt referenced in Article III, Section G, for all public streets within Phase I of the Subdivision, and as-built drawings have been submitted as referenced in Article V, Section A and B.
  3. For Phase III, after the latter of completion of either Phase I or II, or completion of the first lift of asphalt referenced in Article III, Section G, for all public streets within Phase II of the Subdivision and as-built drawings have been submitted as referenced in Article V, Section A and B..

ARTICLE III. Public Improvements.

- A. Public Improvements. As used in this Agreement, the term “Public Improvements” shall mean the water distribution system, sanitary sewers and lift station, public street; sidewalks, surface water drainage system and retention pond, electrical system and street lights, landscaping, street signs and traffic control signs described in this Article III to be dedicated to the City under Article V.
- B. Plans and Specifications. Developer shall file with the City Clerk’s office, a complete set of the plans and specifications for the Public Improvements for the entire Subdivision, as approved by the City Engineer, hereinafter called “Plans and Specification.” Said Plans and Specifications are hereby made a part of this Agreement by reference and including those standard specifications as the City may have adopted at the time of construction.
- C. Method of Improvement. Developer agrees to engage contractors for all Public Improvements included in this Agreement who are qualified to perform the work and who shall be approved as qualified for such work by the City Engineer. The Developer shall have all such contractors execute an agreement as to liability/indemnity and insurance pursuant to the format set forth in Appendix B to this Agreement and file executed document with the city. Developer further agrees to use materials and make the various installations in accordance with the approved Plans and Specifications. Developer further agrees to require all such contractors to pay wages as required by the Wisconsin Department of Workforce Development.
- D. Water Distribution System.
1. Developer shall construct, install, furnish, and provide a complete system of water distribution including, but not limited to, piping, valves, fittings, fire hydrants, throughout the entire Subdivision all in accordance with the Plans and Specifications and all applicable federal, state and local ordinances, specifications, regulations and guidelines for the construction of water systems in the City of Evansville and as approved by the City Engineer.
  2. Upon completion of each phase or sub-phase, Developer shall pressure test, leakage test, and bacteria test according to City and State requirements the entire water distribution system, and repair any defects as determined by the City Engineer, prior to acceptance by the City.
  3. City shall issue no building permit for any lot until the portion of the water distribution system serving such lot has been accepted by the City.
- E. Sanitary Sewers.
1. Developer shall construct, furnish, install, and provide a complete sewerage system throughout the entire Subdivision all in accordance with

the Plans and Specifications and all applicable federal, state and local ordinances, specifications, regulations and guidelines for the construction of sewerage systems in the City of Evansville and as approved by the City Engineer.

2. Upon completion of each phase or sub-phase, developer shall pressure test, leak test, and mandrel test according to City and State requirements the entire sanitary sewer system and repair any defects as determined by the City Engineer prior to acceptance by the City. Developer shall provide copies of all tests conducted to the City.
3. Upon completion of each phase or sub-phase, Developer shall clean all sanitary sewers, televise the sanitary sewer system, provide a copy of the televised video to the City and shall repair any defects as determined by the City Engineer prior to presenting the Public Improvements for acceptance by the City.
4. City shall issue no building permit for any lot until the sanitary sewer serving such lot has been accepted by the City.

F. Surface Water Drainage System.

1. Developer shall construct, install, furnish, and provide adequate facilities for storm and surface water drainage including, but not limited to, piping, inlets, junction structures, on-site ponds, off-site ponds and storm water appurtenances, throughout the entire Subdivision and to perform the grading plan all in accordance with the approved Plans and Specifications and all applicable federal, state and local ordinances, specifications, regulations and guidelines for the construction of storm and surface water drainage systems in the City of Evansville and approved by the City Engineer.
2. Developer shall modify the off-site storm water pond if necessary to satisfy current State and City storm water requirements as part of the first sub-phase of the Subdivision.
3. Developer shall maintain roads free from mud and dirt from construction of the Subdivision.
4. City will issue no building permit for any lot until the finish grading of the entire phase, including that lot, has been accepted by the City. Finish grade shall be defined as spot elevations at lot corners
5. City shall issue no occupancy permits for any lots until the storm water pond modifications have been accepted by the City.
6. City shall retain the right to require Developer to install additional storm and surface water drainage measures and erosion control measures as needed in accordance with generally accepted engineering standards prior to acceptance by the City of the storm and surface water drainage

improvements.

7. Upon completion of each phase or sub-phase, Developer shall clean all storm sewers and shall repair any defects as determined by the City Engineer prior to presenting the improvements for acceptance by the City.
8. Developer shall re-grade areas as directed by the City if contractors who grade individual lots do so in a way that interferes with the flow of surface water as specified in the grading plan.
9. Developer shall guarantee the healthy establishment of vegetative cover planted within storm water basins, swales or green ways for a period of three (3) years from the date of the City's acceptance.
10. Developer agrees that the top of foundation and the minimum elevation in the lowest opening in the foundation for any future structure built on any Lot in the subdivision should be listed on the final recorded plat, attached to this agreement as Exhibit 1. After building permits are issued and at foundation and footing inspections, the City Inspector shall be provided verification of the top of foundation and the minimum elevation in the lowest opening in the foundation by a registered surveyor.

G. Public Streets.

1. Developer shall grade and surface all streets in the Subdivision in accordance with the plat of said subdivision and the Plans and Specifications and all applicable local ordinances, specifications, regulations and guidelines for the construction of roads in the City of Evansville and as approved by the City Engineer.
2. Developer agrees to furnish to the City a copy of the plan showing the street grades in front of each lot and finished yard grade. This information shall be provided prior to the issuance of building permits.
3. Developer shall complete the streets by phase or sub-phase through installation of road base, curbs and gutters and shall present them for preliminary acceptance by the City.
4. City shall issue no building permits for lots on a street until the street has been preliminarily accepted by the City.
5. Developer shall clearly identify streets, lots and addresses within the subdivision with temporary signage before building permits for lots in the subdivision are issued by the City.
6. Developer shall complete the first lift of asphalt on all the streets in a phase or sub-phase no later than one (1) year after the initial

commencement of construction of Public Improvements for the phase or sub-phase, unless extended by the Common Council.

7. Developer shall complete the final lift of asphalt after at least one (1) winter season, but no later than two (2) years after the initial commencement of construction of Public Improvements for the phase or sub-phase, unless extended by the Common Council.
8. Developer shall maintain the streets in the Subdivision until accepted by the City.

H. Sidewalks\Pathways.

1. Developer shall construct, furnish, install, and provide five-foot wide concrete sidewalks within the public rights-of-way on both sides of all public streets.
2. Sidewalks shall be installed at the same time as curb and gutter.
3. Developer shall remain obligated to construct, furnish, install, and provide sidewalks as specified in this Agreement even if Developer enters into agreements with lot purchasers obligating lot purchasers to install the sidewalks.
4. Developer shall construct an 8' wide paved asphalt "bicycle" in the greenspace easement along lots \_\_\_ and \_\_\_ as shown in the Westfield Meadows and Westfield Meadows 1<sup>st</sup> Addition approved engineering drawings the earlier of: A.) no later than when 50% of lots are completed in the subdivisions or B.) No later than October 31, 2020.

I. Electrical System.

1. Developer shall request an estimate for the cost of installing the electrical system in a phase or sub-phase at least 45 days in advance of expected installation date.
2. Developer shall pay, in advance, to the Evansville municipal electric utility the amount of the utility's estimate of the cost of installing the electrical system in the Subdivision including, but not limited to, the bases for transformers, but not including the transformers themselves, within ten (10) days of receiving the estimate from the utility. Installation will be done in sub-phases as close as practical to the sub-phases for the other Public Improvements.
3. In the event the utility's actual cost to install the electrical system is less than the estimate, the utility shall refund the difference to Developer.

4. In the event the utility's actual cost to install the electrical system is greater than the estimate, Developer shall pay the difference to the utility within thirty (30) days of billing.
5. City shall have the Evansville municipal electric utility install all street lighting in the subdivision. The Developer shall pay the municipal utility's cost thereof including, but not limited to, the cost of labor provided by utility employees to install such street lighting, within thirty (30) days of billing.

J. Landscaping.

1. Developer shall remove and lawfully dispose of all outbuildings, destroyed trees, bush, tree trunks, shrubs, and other natural growth and all left over construction materials, construction debris and rubbish from each phase or sub-phase of the Subdivision after the completion of improvements in each phase or sub-phase. The Developer shall not bury any of the materials described in this paragraph in any portion of this Subdivision.
2. Developer shall require all purchasers of lots to plant the greater of A) at least two street trees, or B) one street tree per dwelling unit, in the terrace of each lot of a variety and caliper size approved by the City's Municipal Services Director in the fall or spring immediately following completion of the house on each lot and to plant any and all street trees required by this paragraph if any purchasers of lots fail to do so in a timely fashion. The location of said planting shall be approved by the Municipal Services Director to assure that the plantings will not impact underground utilities.

K. Street Signs.

1. City shall purchase and install all street signs in the subdivision. The Developer shall pay the city's cost thereof including, but not limited to, the cost of labor provided by city employees to install street signs, within thirty (30) days of billing.

L. Traffic Control Signs.

1. City shall provide and apply pavement striping at each crosswalk within the Subdivision and at intersections and approaches outside but near the Subdivision. The Developer shall pay the city's cost thereof including, but not limited to, the cost of labor provided by city employees to install pavement striping, within thirty (30) days of billing.



2. Developer shall pay the City the cost of purchasing and installing all traffic control signs including, but not limited to, the cost of labor provided by City employees to install such signs, within thirty (30) days of billing.

M. Correction of Defects. Developer shall correct defects due to faulty materials or workmanship in any Public Improvement which appear within a period of one (1) year from the date the letter of credit referenced in Article IV, Section C, for each phase or sub-phase of development is released, and shall pay for any damages resulting therefrom to City property. The City may refuse to accept the Public Improvements unless and until they conform to generally accepted industry standards. This correction period does not affect or bar claims for negligence discovered at a later date. Wisconsin law on negligence shall govern negligent workmanship.

N. Additional Improvements.

1. Developer agrees that if modifications to the Plans and Specifications including, but not limited to, additional drainage ways, sanitary sewers, water mains, erosion control measures and storm and surface water management facilities are necessary in the interest of public safety or are necessary for the implementation for the original intent of the Plans and Specifications, the City is authorized to order Developer, at Developer's sole expense, to implement the same, provided such order is made in writing to Developer not later than one (1) year after the City's acceptance of the Public Improvements installed by Developer in the final phase of the Subdivision. Such modifications or additional improvement shall be deemed necessary to the extent they meet or conform to generally accepted engineering standards or change in any regulation, law, or code.
2. Developer shall identify the design of, location on outlots, and perpetual maintenance plans for USPS approved cluster mailbox facilities. No building permits shall be issued until USPS approval of mail delivery for the subdivision is submitted to the City. Costs to install and maintain mail delivery services to the subdivision are the responsibility of the Developer
3. Developer shall agree to develop all lots in the subdivision with dwelling units or residential structures that contain the following on the front facade: A) front porches and B) No garage doors.

#### ARTICLE IV. Obligation to Pay Costs.

A. Reimbursement of Professional and Out-of-Pocket Expenses. Developer agrees to reimburse the City for any costs due to the use of professional staff, including, but not limited to, City Engineer, City Planner and City Attorney, in connection with this Agreement. Costs shall be based on invoices or actual out-of-pocket expenses incurred by the City with no overhead added by the City.

B. Developer's Obligation to Pay Costs. Developer agrees that it is obligated to

construct, furnish, install, and provide all public improvements in the Subdivision or necessary for the Subdivision at its own expense or to pay the City's or municipal utility's costs of constructing, furnishing, installing, and providing such public improvements. If it is necessary to incur an additional cost not explicitly mentioned in this Agreement in order for Developer to be able to perform any obligation of the Developer under this Agreement, Developer agrees the Developer is obligated to pay such cost.

C. Irrevocable Letters of Credit.

1. For each phase or sub-phase, Developer shall file with the City Clerk (i) a letter describing the scope of the phase or sub-phase that Developer intends to construct and (ii) an irrevocable letter of credit in favor of the City from a lending institution approved by the City in a form approved by the City in an amount sufficient, as determined by the City Engineer, to pay the costs the City would incur to complete all Public Improvements for the phase or sub-phase.
2. No construction of Public Improvements for a phase or sub-phase shall begin until Developer has filed with the City Clerk an irrevocable letter of credit that meets the requirements of the preceding paragraph.
3. The City Engineer shall determine the amount of each irrevocable letter of credit based on the scope of the Public Improvements for the phase or sub-phase.
4. The irrevocable letter of credit for each phase or sub-phase shall not expire until two (2) years from the date on which the irrevocable letter of credit is issued.
5. Developer shall provide an extension of the duration of such irrevocable letter of credit, upon demand by the City, if not all of the Public Improvements for the phase or sub-phase have been completed and accepted prior to its expiration.
6. Such irrevocable letter of credit shall stand as security for the reimbursement of costs the city expends under this agreement and for the completion of Public Improvements for the phase or sub-phase until the City accepts the Public Improvements for the phase or sub-phase pursuant to Article V.
7. The lending institution providing the letter of credit shall pay to the City any draw upon demand, and upon its failure to do so, in whole or in part, the City shall be empowered in addition to its other remedies, without notice or hearing, to impose special assessments in the amount of said demand, or satisfaction cost, upon each and every lot in the subdivision payable in the next succeeding tax year.
8. The City, in its sole discretion, shall permit the amount of each letter of credit to be reduced by an amount reasonably proportionate to the cost of the Public Improvements that are paid for by Developer and accepted by the

City, provided that the remaining letter of credit is sufficient to secure payment for any remaining Public Improvements required, through the issuance of a letter from the City Administrator to the lending institution that issued such letter of credit agreeing to such reduction.

- D. City Costs. The City will be responsible for any development fees and costs applicable to City-owned land.

ARTICLE V. Dedication and Acceptance.

- A. Digital File of Final Plat. Developer shall furnish the City with a copy of the digital file of the drawing of the final plat, and the City may make any use it believes is appropriate of this file including, but not limited to, furnishing this file to the City Engineer and to Rock County to update digital parcel maps of the City.
- B. “As Built” Plans. Developer agrees to furnish the City with “as built” plans of the entire system of Public Improvements in each phase or sub-phase upon completion and acceptance thereof. All “as built” plans shall be submitted by Developer to the City in both paper and digital forms. All “as built” plans shall include, but not be limited to, the horizontal and vertical locations of curb stops, water valves, water bends, water fittings, hydrants, sewer wyes, sewer laterals, sewer manholes, storm sewer inlets, storm sewer pipe ends, and storm sewer manholes. Locations shall be given in the Rock County coordinates system and dimensioned from permanent structures.
- C. Statement of Costs. Developer shall furnish, within 30 days of City’s request, the City with a statement of the total costs of Public Improvements in the Subdivision in each of the following categories: (1) streets (including signage) and sidewalks, (2) sanitary sewers and lift station, (3) water distribution system, (4) surface water drainage system, (5) electrical system, (6) landscaping, and, if requested to do so by the City, to furnish a statement of such information for each phase or sub-phase. This information is required for the City’s accounting records and reports to state agencies such as the Public Service Commission.
- D. City Responsibility. The City shall perform no repairs or maintenance on the Public Improvements until accepted by the City. Trash and garbage removal service and snow removal will be provided by the City for each phase or sub-phase upon the issuance of the first occupancy permit in each such phase or sub-phase.
- E. Dedication. Developer shall, without charge to the City, upon completion by phases or sub-phases of all Public Improvements, unconditionally give, grant, convey and fully dedicate the same to the City, its successors and assigns, forever, free and clear of all encumbrances whatever, together with, all structures, mains, conduits, pipes, lines, equipment and appurtenances which may in any way be part of or pertain to such Public Improvements and together with any and all necessary easements for access thereto. After such dedication, the City shall have the right to connect or integrate other sewer or water facilities with those facilities provided hereunder as the City decides, with no payment or award to, or consent required of, Developer. Dedication by Developer shall not constitute acceptance of any improvements by the City; Developer shall be responsible for all maintenance of Public Improvements

serving the phase or sub-phase until accepted by the City.

- F. Acceptance. The City or its representatives shall provide the Developer with a letter of acceptance of all Public Improvements required to be constructed in this Agreement upon acceptable completion thereof in each phase or sub-phase subject to the reasonable approval of the City Engineer. The City or its representatives shall provide such letter accepting or rejecting Developer's request for acceptance of such Public Improvements within forty-five (45) days of submission of such request in writing to the City Engineer. If such request is rejected, the City or its representatives shall enclose with the notification letter a letter from the City Engineer specify the reasons for such rejection. As soon as practical after the issuance of such letters of acceptance, the Common Council will adopt resolutions accepting the dedications of Public Improvements in each phase or sub-phase.

ARTICLE VI. Issuance of Building Permits/Occupancy Permits.

- A. No building permits shall be issued by the City for any lot in the Subdivision until the Common Council has approved this Agreement and the final plat of the Subdivision. Additionally, no building permit shall be issued until the Developer has paid in full all sums that are required to be paid within ten (10) days of approval of this agreement by the Common Council, the City Clerk/Treasurer has signed the final plat and the final plat has been recorded.
- B. No building permits shall be issued until the developer has completed the installation of survey monuments.
- C. No building permits shall be issued by the City for any lot on a street until the road base, sidewalk, curb and gutter have been completed and preliminarily accepted by the City.
- D. No building permit shall be issued by the City for any lot until the sanitary sewer and water system serving such lot have been completed and accepted by the City.
- E. No building permit shall be issued by the City for any lot in a phase or sub-phase until all rough site grading for the phase or sub-phase has been completed to within 6" of final grade and accepted by the City.
- F. No occupancy permit shall be issued by the City for any lot until the first lift of asphalt has been installed on the street adjoining said lot.
- G. No occupancy permit shall be issued by the City for any lot until the final grade is complete and stormwater management practices serving such lot have been completed and accepted by the City.
- H. No occupancy permit shall be issued by the City for any lot until required street trees and sidewalks are installed.
- I. The City reserves the right to withhold issuance of any and all building and/or occupancy permits if Developer is in violation of this Agreement.

ARTICLE VII. Default and Remedies.

- A. Events of Default. As used in this Agreement, the term “Event of Default” shall include, but not be limited to any of the following:
1. Failure by the Developer to pay the City any fees, charges or reimbursement required to be paid under this Agreement.
  2. Failure by the Developer to commence and complete the construction of any Public Improvements pursuant to the terms of this Agreement.
  3. Failure by the Developer to maintain an irrevocable letter of credit adequate to complete the Public Improvements of any phase or sub-phase pursuant to Article IV.
  4. Failure by the Developer or the City to observe or perform or cause to be observed or performed any covenant, condition, obligation or agreement on its part to be observed or performed as set forth in this Agreement.
- B. Remedies on Default. Whenever any Event of Default occurs the non-defaulting party may suspend its performance under this Agreement and, upon thirty (30) days written notice of the right to cure such default, may pursue any legal or administrative action, including the authority to draw upon the irrevocable letter of credit described in Article IV, which appears necessary or desirable to compel the defaulting party to comply with this Agreement and/or to seek an award of monetary damages.
- C. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City or the Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice in this Article VII.
- D. No Additional Waiver Implied by One Waiver. In the event that any agreement contained in this Agreement should be breached by another party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

ARTICLE VIII. Miscellaneous.

- A. Captions. Any captions of the several parts of this Agreement are inserted for

convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

- B. Severability. If any term of this Agreement shall, for any reason and to any extent, be invalid or unenforceable, the remaining terms shall be in full force and effect.
- C. Entire Agreement. This Agreement contains all of the terms, promises, covenants, conditions and representations made or entered into by or between City and Developer and supersedes all prior discussions and agreements whether written or oral between the parties. This Agreement constitutes the sole and entire Agreement between City and Developer and may not be modified or amended unless set forth in writing and executed by City and Developer with the formalities hereof.
- D. Status of City. Nothing herein shall be deemed to create or establish the City as a copartner or joint venturer with Developer in the design, construction, ownership or operation of the Subdivision; nor shall the City be entitled to proceeds or revenues derived from the ownership or operation of the Subdivision.
- E. Good Faith. Any actions taken pursuant to this Agreement will be measured by an implied covenant of good faith and fair dealing.
- F. Ordinances and Municipal Code. All provisions of the City's ordinances and Municipal Code are incorporated herein by reference, and all such provisions shall bind the parties hereto and be part of this Agreement as fully as if set forth at length herein. This Agreement and all work and the Public Improvements herein shall be performed and carried out in strict accordance with and subject to the provisions of said ordinances.
- G. Acknowledgement from Lot Purchasers. Developer agrees to deliver the purchaser of any lot within the Subdivision, before closing, a copy of Appendix C and agrees to obtain from each lot purchaser, at or before closing of the purchasers lot, acknowledgment of the receipt of a notice in the form attached hereto as Appendix C, and Developer shall provide a copy of such acknowledgment to the City.
- H. General Indemnity. In addition to, and not to the exclusion or prejudice of, any provisions of this Agreement, or documents incorporated herein by reference, Developer shall indemnify and save harmless the City, its trustees, officers, agent, independent contractors, and employees, and shall defend the same from and against any and all liability, claims, losses, damages, interests, action, suits, judgment, costs, expenses, attorney fees and the like to whomever owned and by whomever and whenever brought or maintained which may in any manner result from or arise in the cause of, out of, or as a result of the following acts or omissions of Developer:
  - 1. Negligent performance of this Agreement.

2. Negligent construction or operation of improvements covered under this Agreement.
  3. Violation of any law or ordinance.
  4. The infringement of any patent trademark, trade name or copyright.
  5. Use of public street improvements prior to their dedication and formal acceptance by the City.
  6. In any case where judgment is recovered against the City for any one or more of the foregoing acts or omissions of Developer, if notice and opportunity to defend has been delivered to Developer of the pendency of the suit, within ten (10) days after the City has been served with the same, the judgment shall be conclusive of Developer and not only as to the amount of damages, but also as its liability to the City, provided such judgment has become final and all rights of appeal have been exhausted, or if no appeal has been filed, all appeal periods have expired.
  7. Developer shall name as additional insured on its general liability insurance the City, its trustees, officers, agents, employees and independent contractors hired by the City (including without limitation the City Engineer) to perform services with respect to this Agreement and give the City evidence of the same upon request by the City.
  8. Developer shall furnish a completed Appendix B prior to start of construction by any entity retained by or used by the Developer to fulfill the Developer's obligations under the Agreement.
- I. Heirs and Assigns. This Agreement is binding upon Developer, owners, guarantors, their respective heirs, successors and assigns, and any and all future owners of the subject lands.
- J. No Assignment. Developer shall not assign its rights under this Agreement without the written consent of the City.
- K. Amendments. The City and Developer, by mutual consent, may amend this Agreement at any regularly scheduled meeting of the City's Common Council, if properly noticed pursuant to the open meeting law. The Common Council shall not, however, consent to an amendment until after first having received a recommendation from the City's Plan Commission.
- L. Notice. All notices, demands or consents provided for in this Agreement shall be in writing and shall be delivered to the parties hereto by hand or by United States mail. All such communications shall be addressed at the following, or other such address as either may specify to the other in writing:

To Developer:  
Evansville  
Development Group  
Attn: Roger Berg  
102 E Main Street  
Evansville, WI 53536

To City:  
Evansville Community Development Director  
31 S. Madison St.  
PO Box 529  
Evansville, WI 53536

- M. Binding Effect. This Agreement shall be permanent and run with the property described in Appendix A, and the rights granted and responsibilities assumed thereby shall inure to, and be binding upon, the parties, their heirs, successors and assigns. Developer's obligations under this Agreement cannot be assigned without prior consent of City; such consent shall not be unreasonably withheld.

**Evansville Development Group**

By: \_\_\_\_\_

\_\_\_\_\_  
(print name and title)

The obligations of the Developer stated above in this Final Land Divider's Agreement are hereby personally guaranteed by the undersigned, who state they fully understand and accept the responsibilities of the Subdivider.

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(print name)

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(print name)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(print name)



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date stated.

CITY OF EVANSVILLE:

\_\_\_\_\_  
William Hurtley, Mayor

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

\_\_\_\_\_  
Judy Walton, City Clerk

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

**APPENDIX A**

**Property Descriptions**

LOTS 21,30,31,32 AND 33, WESTFIELD MEADOWS, LOCATED IN THE SE 1/4 AND OF THE SW 1/4 OF SECTION 28 AND IN THE NE 1/4 of the NW 1/4 OF SECTION 33, ALL IN T.4N., R.10E. OF THE 4<sup>TH</sup> P.M., CITY OF EVANSVILLE, ROCK COUNTY, WISCONSIN.

**APPENDIX B**

**Agreement as to Liability, Indemnity and Insurance**

1. FOR VALUABLE CONSIDERATION, \_\_\_\_\_ (CONTRACTOR), hereinafter referred to as "Contractor," acknowledges that the work to be performed for construction of improvements (the "Work") in the Stonewood Grove located in the City of Evansville, hereinafter referred to as "City," will be conducted in accordance with the latest edition of the project plans and specifications as reviewed by the City Engineer and as approved by the City and any other agencies having jurisdiction and on file in the City Clerk's office.

2. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, for the Work whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable.

- A. Claims under worker's compensation, disability benefits and other similar employee benefits acts;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
- C. Claims for damages because of bodily injury, sickness, or disease, or death of any person other than CONTRACTOR's employees;
- D. Claims for damages insured by customary personal injury liability coverage which are sustained: (1) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (2) by any other person for any other reason;
- E. Claims for damages, other than the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
- F. Claims for damages because of bodily injury or death or any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The policies of insurance so required by this paragraph 2 to be purchased and maintained by CONTRACTOR shall include by endorsement as additional insureds (subject to any customary exclusion in respect of professional liability) the City and City

Engineer and include coverage for the respective officers and employees of all such additional insureds. A certificate of insurance shall be provided to the City along with the endorsements listed above. Failure to procure adequate insurance shall not relieve the CONTRACTOR of its obligation under this Indemnity/Hold Harmless Agreement.

3. Indemnification. To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the City and the City Engineer, and the officers, directors and employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including, but not limited to all fees and charges for engineers, architects, attorneys and other professionals and all court or arbitration or other dispute, resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claims, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable regardless of whether or not caused in part by any negligence or omission of a person or entity indemnification hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

4. In any and all claims against the City or the City Engineer or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under worker's compensation acts, disability benefit acts or other employee benefit acts.

5. The indemnification obligations of CONTRACTOR under paragraph 3 shall not extend to that portion of liability of the City Engineer, and its officers, directors, employees or agents caused by the professional negligence, errors, or omissions of any of them.

6. CONTRACTOR further understands and agrees that the City, its officers, agents, employees and the City Engineer are not responsible for the CONTRACTOR's means and methods of construction and that the CONTRACTOR has the sole responsibility and liability for project safety.

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

\_\_\_\_\_  
(print name of CONTRACTOR), a Wisconsin Corporation

By: \_\_\_\_\_

\_\_\_\_\_  
(print name and title)

By: \_\_\_\_\_

\_\_\_\_\_, Secretary  
(print name)

**APPENDIX C**

The undersigned purchaser of Lot(s) \_\_\_\_\_ in the Stonewood Grove Subdivision (the "Subdivision") hereby acknowledges that the City of Evansville will not issue a building permit/occupancy permit until the following conditions are met:

- A. No building permits shall be issued by the City of Evansville (the "City") for any lot in the Subdivision until the Common Council has approved the Final Land Divider's Agreement (the "Agreement") between Evansville Development Group, (the "Developer") and the City, the City has approved the final plat of the Subdivision, Developer has paid in full all sums that are required to be paid within ten (10) days of approval of the Agreement by the Common Council, the City Clerk/Treasurer has signed the final plat, and the final plat has been recorded.
- B. No building permits shall be issued by the City for any lot on a street until the road base, curb and gutter have been completed and preliminarily accepted by the City.
- C. No building permit shall be issued by the City for any lot until the sanitary sewer and water system serving such lot have been completed and accepted by the City.
- D. No building permit shall be issued by the City for any lot in a phase or sub-phase until all final site grading for the phase or sub-phase has been completed and accepted by the City.
- E. No building permit shall be issued by the City for the purchased lot until this Appendix C has been signed and submitted to the Building Inspector
- F. No occupancy permit shall be issued by the City for any lot until the first lift has been installed on the street adjoining said lot.
- G. No occupancy permit shall be issued by the City for any lot until a five-foot wide concrete sidewalk within the public right of way has been installed pursuant to municipal ordinances.

The undersigned purchaser acknowledges the City requires the purchaser of each lot to plant at least one street tree in the terrace of a variety and caliper size approved by the City's Superintendent of Municipal Services in the fall or spring immediately following completion of the house. The location of said planting shall be approved by the Superintendent of Municipal Services to assure that the planting will not impact underground utilities.

The undersigned purchaser acknowledges that there will be restrictions on the minimum elevations of the lowest opening of the foundation and waterproofing or pumping may be necessary to protect structures from ground water. Lowest opening and top of foundation will be shown on the final plat.

The undersigned purchaser acknowledges that this "Appendix C" shall be delivered to the person or entity initially occupying the dwelling on the lot if the undersigned purchaser is anyone other than the person or entity initially occupying the dwelling.

The undersigned purchaser acknowledges that the lots in the Subdivision are subject to zoning that requires each single-family dwelling to contain a minimum total number of square feet on the first floor and above, that the City has no obligation to change the zoning or grant a conditional use permit if such zoning makes it difficult to re-sell any lot in the Subdivision, and that the undersigned purchaser knowingly accepts such risk.

Acknowledged by:

Date:

---

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DRAFT 11/1/2019

**EXHIBIT 1**

**Westfield Meadows 1<sup>st</sup> Addition Subdivision**



**EXHIBIT 2**

**Westfield Meadows Land Dividers Agreement and Amendments**





## Evansville MS Review Comments

Ryan Birschbach, PE <rBirschbach@kapurinc.com>  
To: Jason Sergeant <jason.sergeant@ci.evansville.wi.gov>  
Cc: Ryan Sands <rsands@brayarch.com>, Andrew Iverson <aiverson@brayarch.com>

Fri, Oct 11, 2019 at 8:42 AM

Jason,

Attached is our revised landscape plan showing similar if not more coverage of the southern property line.

Please review and let me know if this is acceptable.

Thanks,

**Ryan Birschbach, PE**

Project Engineer



Kapur

O: 262.758.6035

7711 N Port Washington Road

Milwaukee, Wisconsin 53217

| [kapurinc.com](http://kapurinc.com)

**From:** Jason Sergeant <jason.sergeant@ci.evansville.wi.gov>  
**Sent:** Friday, October 11, 2019 8:14 AM  
**To:** Ryan Birschbach, PE <rBirschbach@kapurinc.com>  
**Subject:** Re: Evansville MS Review Comments

Ryan, It is really a linear coverage issue, it looks to me like the size of the trees in the drawing was reduced, but do see same number. As a result, less linear feet of the lot line are now covered by trees. Two solutions are possible, add trees to equal same linear coverage (maybe just one or two?) or take current plan back to commission for review.

-J

On Fri, Oct 11, 2019 at 8:07 AM Ryan Birschbach, PE <rBirschbach@kapurinc.com> wrote:

Jason,

I am just following up on this to see if you had any direction in order for us to proceed.

Thanks,

**Ryan Birschbach, PE**

Project Engineer




Kapur



O: 262.758.6035

7711 N Port Washington Road

 | [kapurinc.com](http://kapurinc.com)

Milwaukee, Wisconsin 53217

**From:** Ryan Birschbach, PE

**Sent:** Tuesday, October 8, 2019 9:23 AM

**To:** 'Jason Sergeant' <[jason.sergeant@ci.evansville.wi.gov](mailto:jason.sergeant@ci.evansville.wi.gov)>

**Cc:** 'Ryan Sands' <[rsands@brayarch.com](mailto:rsands@brayarch.com)>; 'Andrew Iverson' <[aiverson@brayarch.com](mailto:aiverson@brayarch.com)>

**Subject:** RE: Evansville MS Review Comments

Jason,

Attached are the versions of plans I believe you are referring to. We revised the locations of the trees because we added a swale along the south property line to deflect any storm water from going onto the neighboring properties. We are proposing the same amount of trees of the same exact size, just in slightly different locations to work better with the new swale.

Let me know your thoughts on this.

Thanks,

**Ryan Birschbach, PE**

**Project Engineer**

Kapur



O: 262.758.6035

7711 N Port Washington Road

 | [kapurinc.com](http://kapurinc.com)

Milwaukee, Wisconsin 53217

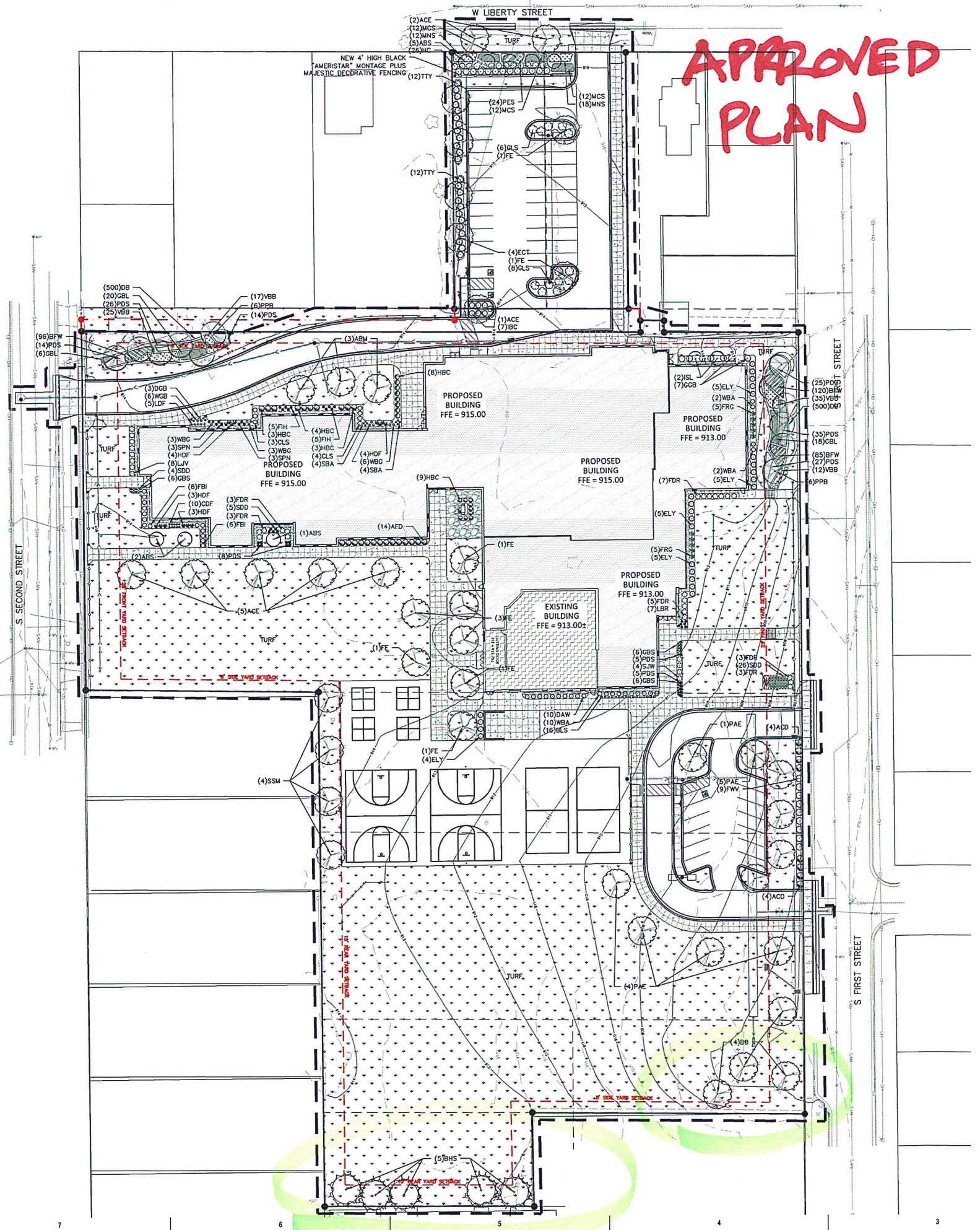
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 L1.1 - SITE LANDSCAPE PLAN.pdf  
985K

**APPROVED PLAN**



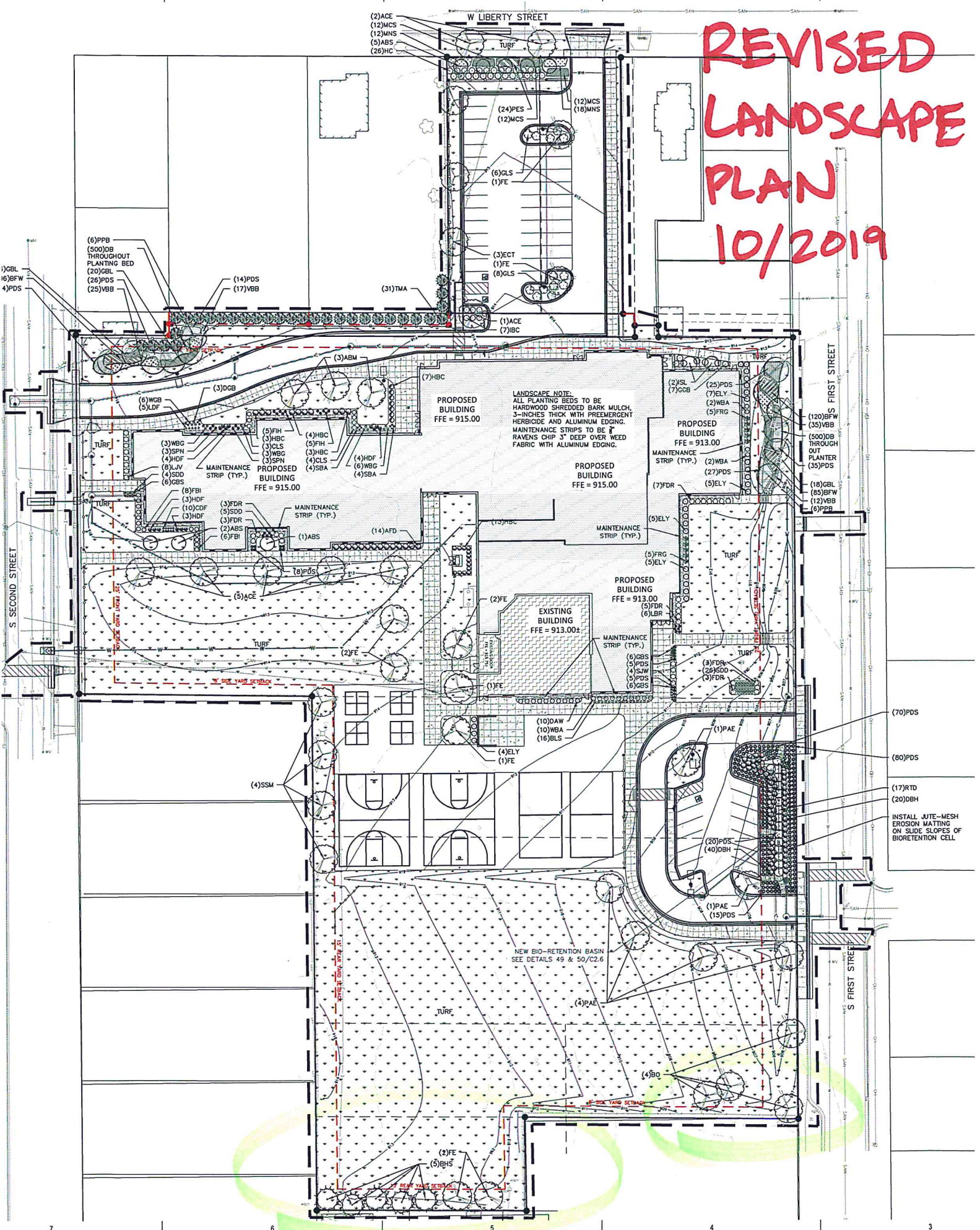
APPROVED  
PLAN



REVISED  
PLAN P/2019



# REVISED LANDSCAPE PLAN 10/2019



PROPOSED BUILDING  
FFE = 915.00

PROPOSED BUILDING  
FFE = 913.00

PROPOSED BUILDING  
FFE = 915.00

PROPOSED BUILDING  
FFE = 913.00

EXISTING BUILDING  
FFE = 913.00±

NEW BIO-RETENTION BASIN  
SEE DETAILS 49 & 50/C2.6

INSTALL JUTE-MESH  
EROSION MATTING  
ON SLIDE SLOPES OF  
BIORETENTION CELL

REVISED  
LANDSCAPE  
PLAN  
10/2019

**REPORT REVIEWED  
LAST MONTH** **FE**

September 9, 2019

Mr. Andrew Iverson  
Bray Architects  
829 S. 1<sup>st</sup> Street  
Milwaukee, WI 53204

SUBJECT:       Evansville Middle School, Evansville, WI  
                  Exterior HVAC Sound Study

e-mail:         [aiverson@brayarch.com](mailto:aiverson@brayarch.com)

Dear Mr. Iverson,

We have completed an acoustical review of mechanical equipment associated with the proposed Evansville Middle School in Evansville, WI. This report discusses applicable noise regulations and presents our sound impact assessment. Appendix A presents a glossary of acoustical terminology used in this report.

**Noise Regulations**

The City of Evansville Municipal Code contains a section pertaining to noise but does not contain specific limits applicable to this project. However, the City of Evansville Zoning Code Chapter 130 sets specific limits applicable to this project as shown below.

***Evansville Zoning Code Chapter 130-236. Noise***

(a) No activity shall produce a sound level outside the I-1, light industrial district, I-2, heavy industrial district or I-3 special industrial district boundaries which exceeds the following sound level, measured by a sound level meter and associated octave band filter:

Octave Band Frequency (cycles per second)	Sound Level (decibels)
0 to 75	79
75 to 150	74
150 to 300	66
300 to 600	59
600 to 1,200	53
1,200 to 2,400	47
2,400 to 4,800	41
Above 4,800	39

Mr. Andrew Iverson, September 9, 2019  
 Evansville Middle School, Evansville, WI  
 Exterior HVAC Sound Study

(b) No activity in any other district shall produce a sound level outside its premises that exceeds the following:

Octave Band Frequency (cycles per second)	Sound Level (decibels)
0 to 75	72
75 to 150	67
150 to 300	59
300 to 600	52
600 to 1,200	46
1,200 to 2,400	40
2,400 to 4,800	34
Above 4,800	32

(c) All noise shall be so muffled or otherwise controlled as not to become objectionable due to intermittence, duration, beat frequency, impulse character, periodic character or shrillness.

The zoning code limits are expressed in the older octave band system. These have been replaced by a new set called the "preferred octave bands." These are defined in *ANSI/ASA S1.6-1984 (R 2011) Preferred Frequencies, Frequency Levels, and Band Numbers for Acoustical Measurements*. The City of Evansville Zoning Code limits are shown converted to the corresponding preferred octave band frequency limits in Table 1. This conversion is necessary as sound level meters conforming to current instrumentation standards no longer exist that are able to measure sound levels in the old octave bands.

Preferred Octave Bands (Hz)	Industrial Districts Permitted Sound Pressure Level (dB)	Other Districts Permitted Sound Pressure Level (dB)
63	77	70
125	72	65
250	64	57
500	57	50
1000	51	44
2000	45	38
4000	40	33
8000	40	33
A-weight (dBA)	61	54

Table 1. City of Evansville Zoning Code Chapter 130-236 limits converted to preferred octave bands

**Project Noise Analysis**

Estimated sound levels produced by the proposed rooftop mechanical equipment have been calculated using CadnaA environmental sound modeling software (Version 2019 MR2 DataKustic GmbH). The acoustic modeling requires equipment noise emission levels, the location of the sources, the location of the receptors, and adjustments for how the noise may propagate from the source to the receiver. The

Mr. Andrew Iverson, September 9, 2019  
Evansville Middle School, Evansville, WI  
Exterior HVAC Sound Study

CadnaA sound modeling software uses algorithms and procedures described in International Standard ISO 9613-2:1996 "Acoustics- Attenuation of sound during propagation outdoors – Part 2: General method of calculation."

The following mechanical equipment were included in the computer model:

- Three (3) Rooftop Air Handling Units (RAHU-1, RAHU-2 and RAHU-3). Located on the roof. Sound data attached to this report.
- One (1) Chiller (ACCU-1) with Compressor Sound Enclosure. Located on the roof. Sound data attached to this report.

Figures 1 and 2 present the results of the acoustic modeling at six residential locations surrounding the proposed school for daytime and nighttime equipment operation scenarios, respectively. The analysis indicates that project related sound is expected to vary between 30 and 45 dBA at the various nearest residential locations during daytime hours and less than 29 to 43 dBA during nighttime hours. Figure 3 presents the receptor locations used in computer modeling.

Equipment operation assumptions (based on information from the mechanical engineer):

- Daytime:
  - All rooftop equipment is operating
  - Equipment only operates as needed for heating/cooling, not all equipment is expected to operate at the same time
- Nighttime:
  - RAHU-1 and RAHU-2 – Operate on an occupied/unoccupied schedule – meaning that all of the AHU's should be "off" at night (unless it is a very warm night or there is a special event at the school)
  - Chiller – On the occasion that chilled water would be required at night – it would likely only need to operate at partial load. Nighttime chiller operation has been modeled at 50% load

Table 2 presents the results of acoustic modeling with project related sound for daytime and nighttime operations.

**Table 2 –Estimated Project Sound Levels at Receptor Locations (dBA)**

Location	Daytime Project Sound Level	Nighttime Project Sound Level	Evansville Zoning Code Limit
R1	45	43	54
R2	42	39	
R3	41	38	
R4	34	32	
R5	30	29	
R6	33	30	

Mr. Andrew Iverson, September 9, 2019  
Evansville Middle School, Evansville, WI  
Exterior HVAC Sound Study

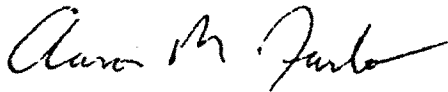
Page 4

**Conclusion**

Based on our review, it is our opinion that new mechanical equipment sound emissions associated with the proposed school will comply with all applicable regulations.

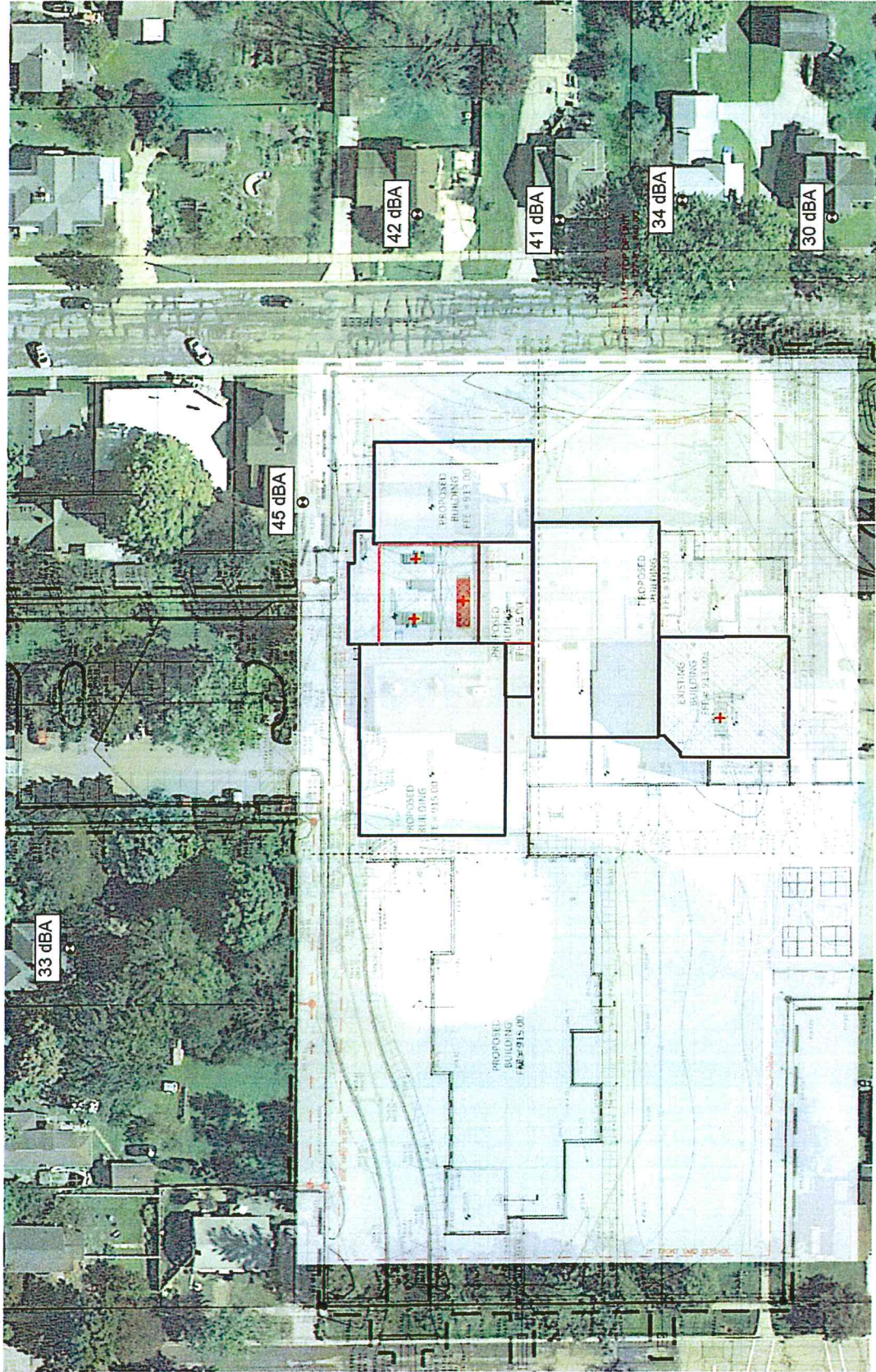
Please feel free to contact us if you have any questions.

Sincerely,  
CAVANAUGH TOCCI



Aaron M. Farbo, Associate Principal Consultant  
19139/Evansville Middle School Exterior HVAC Report.docx

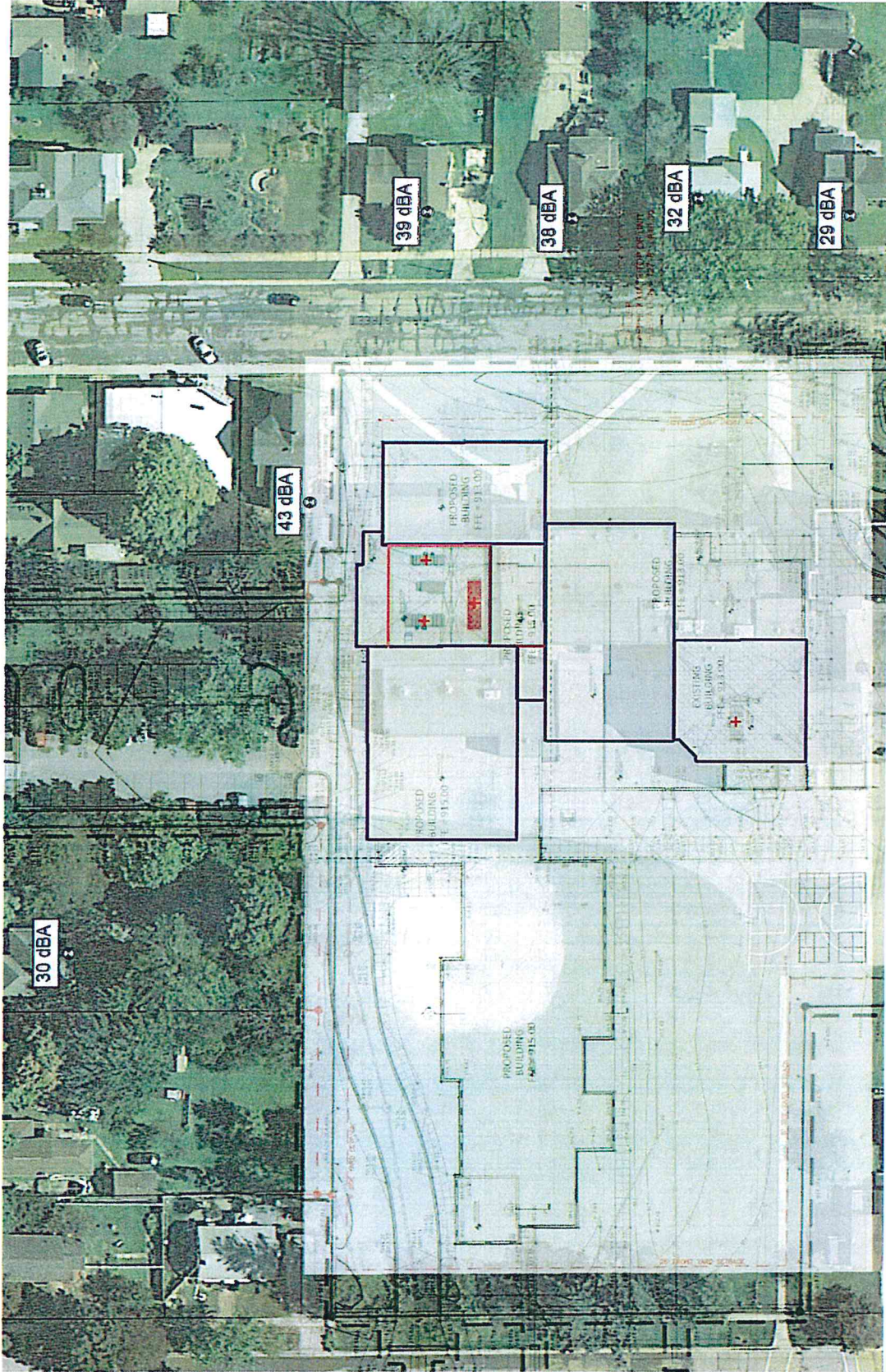
# FIGURES



Estimated Project Related Daytime Sound Levels at Nearest Residential Locations

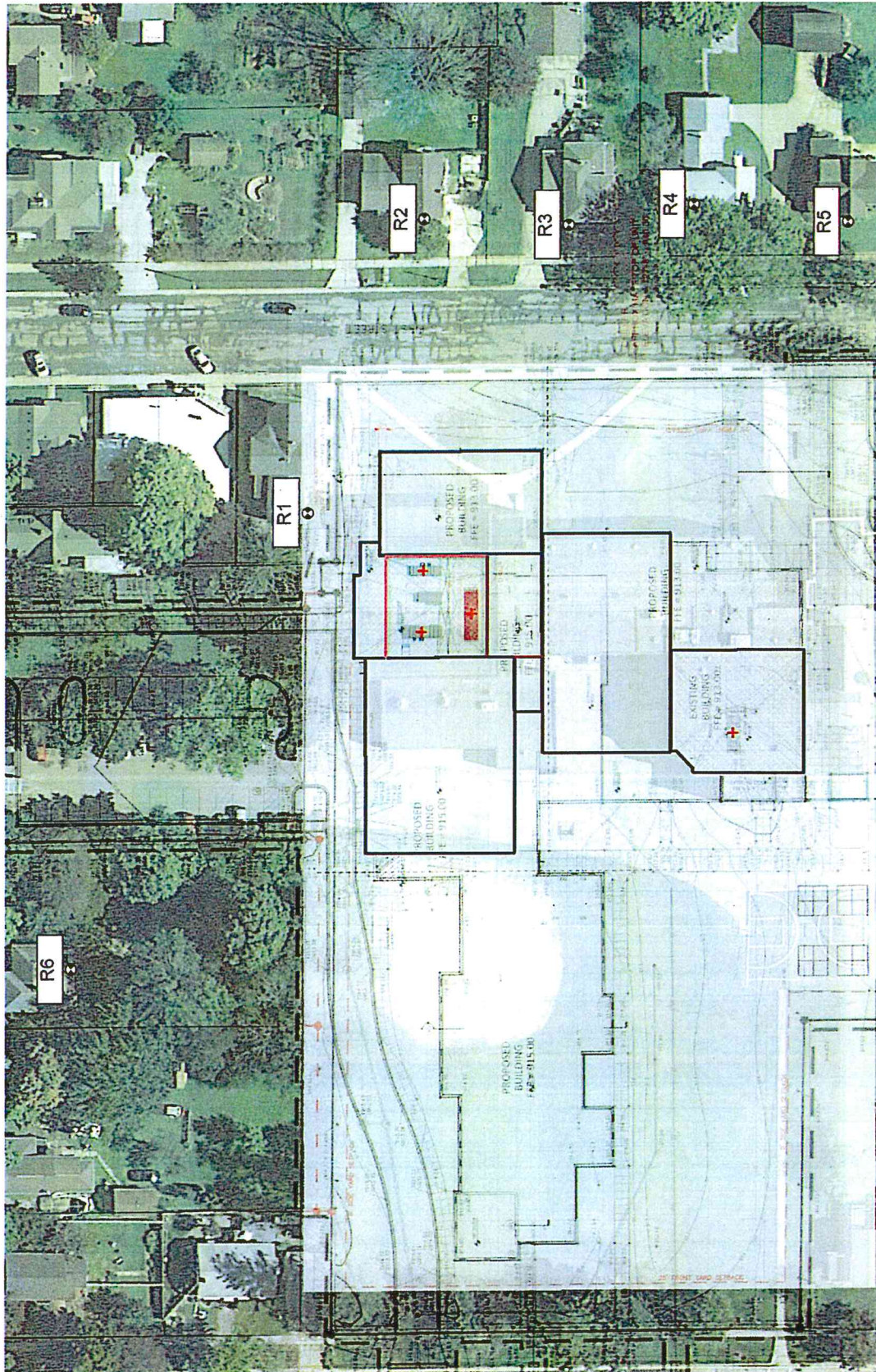
Figure 1





Estimated Project Related Nighttime Sound Levels at Nearest Residential Locations

Figure 2



Computer Modeling Receptor Locations

Figure 3

# APPENDIX A

## Sound Measurement Terminology

## **SOUND MEASUREMENT TERMINOLOGY**

In order to quantify the amplitude, frequency, and temporal characteristics of sound, various acoustical descriptors are used. The following is an introduction to acoustic terminology that is used in this report.

### **Sound Level**

Sound levels are typically quantified using a logarithmic decibel (dB) scale. The use of a logarithmic scale helps to compress the wide range of human sensitivity to sound amplitude into a scale that ranges from approximately 0 to 180 dB. Note however, that the use of the logarithmic scale prevents simple arithmetic operations when combining the cumulative impact of sources. For example, two sources of equal sound level operated simultaneously results in a combined sound level that is only 3 dB higher than if only one source was operated alone. An important feature of the human perception of continuous sound is that an increase or decrease in sound pressure level by 3 dB or less is barely perceptible, and an increase or decrease by 10 dB is perceived as a doubling or halving of noise level.

### **A-weighting**

Generally, the sensitivity of human hearing is restricted to the frequency range of 20 Hz to 20,000 Hz. However, the human ear is most sensitive to sound in the 500 Hz to 5,000 Hz frequency range. Above and below this range, the ear becomes progressively less sensitive. To account for this feature of human hearing, sound level meters incorporate filtering of acoustic signals that corresponds to the varying sensitivity of the human ear to sound at different frequencies. This filtering is called A-weighting. Sound level measurements that are obtained using this filtering are referred to as A-weighted sound levels and are signified by the identifier, dBA. A-weighted sound levels are widely used for evaluating human exposure to environmental sounds. To help place A-weighted sound levels in perspective, Figure A-1 contains a scale showing typical sound levels for common interior and environmental sound sources.

### **Spectral Characteristics – Octave and 1/3 Octave Band Sound Levels**

To characterize a sound, it is often necessary to evaluate the frequency distribution of the sound energy. As mentioned before, the frequencies of most interest where human exposure is concerned range between 20 Hz and 20,000 Hz. This frequency range is commonly divided into octave bands, where an octave band is a range of frequencies. Each octave band is referred to by its center frequency and has a bandwidth of one octave (a doubling of frequency). To cover the full range of human hearing, it is necessary to measure sound in 10 separate octave bands. Typically, the lowest frequency band measured has a center frequency of 31.5 Hz. The next frequency band has a center frequency of 63 Hz. This geometric series continues to the highest frequency band that has a center frequency of 16,000 Hz. A set of octave band sound levels to describe a particular sound is called an octave band spectrum. Covering the full range of

hearing, an octave band spectrum would have 10 values, one for each band. Under certain circumstances, more frequency resolution in acoustical data is needed to identify the presence of tonal sounds. A 1/3 octave band spectrum uses filters that divide each octave band into 3 separate frequency bands. Note that octave band and 1/3 octave band sound levels are not usually A-weighted, with their units being dB.

**Environmental Noise Descriptors**

Sound levels in the environment are continuously fluctuating and it is difficult to quantify these time-varying levels with single number descriptors. Statistical approaches, which use *percentile sound levels* and *equivalent sound levels*, are often used to quantify the temporal characteristics of environmental sound.

Percentile sound levels ( $L_n$ ) are the A-weighted sound levels that are exceeded for specific percentages of time within a noise measurement interval. For example, if a measurement interval is one hour long, the 50<sup>th</sup> percentile sound level ( $L_{50}$ ) is the A-weighted sound level that is exceeded for 30 minutes of that interval.

- $L_{90}$  is the sound level in dBA exceeded 90 percent of the time during the measurement period. The 90<sup>th</sup> percentile sound level represents the nominally lowest level reached during the monitoring interval and is typically influenced by sound of relatively low level, but nearly constant duration, such as distant traffic or continuously operating industrial equipment. The  $L_{90}$  is often used in standards to quantify the existing background or residual sound level.
- $L_{50}$  is the median sound level: the sound level in dBA exceeded 50 percent of the time during the measurement period.
- $L_{10}$  is the sound level exceeded only 10 percent of the time. It is close to the maximum level observed during the measurement period. The  $L_{10}$  is sometimes called the intrusive sound level because it is caused by occasional louder noises like those from passing motor vehicles or aircraft.

By using percentile sound levels, it is possible to characterize the sound environment in terms of the steady-state background sound ( $L_{90}$ ) and occasional transient sound ( $L_{10}$ ).

The equivalent sound level ( $L_{eq}$ ) is the energy average of the A weighted sound level for the measurement interval. Sounds of low level and long duration, as well as sounds of high level and short duration influence this sound level descriptor.

Noise levels at night generally produce greater annoyance than do the same levels which occur during the day. It is generally agreed that a given level of environmental noise during the day would appear to be 10 dBA louder at night – at least in terms of potential for causing community concern. The day night average sound level ( $L_{dn}$ ) is a 24 hour average A-weighted

sound level where a 10 dB “penalty” is applied to sound occurring between the hours of 10:00 p.m. and 7:00 a.m. The 10 dB penalty accounts for the heightened sensitivity of a community to noise occurring at night.

When a steady continuous sound is measured, the  $L_{10}$ ,  $L_{50}$ ,  $L_{90}$  and  $L_{eq}$  are all equal. For a constant sound level, such as from a power plant operating continuously for a 24-hour period, the  $L_{dn}$  is approximately 6 dBA higher than the directly measured sound level.

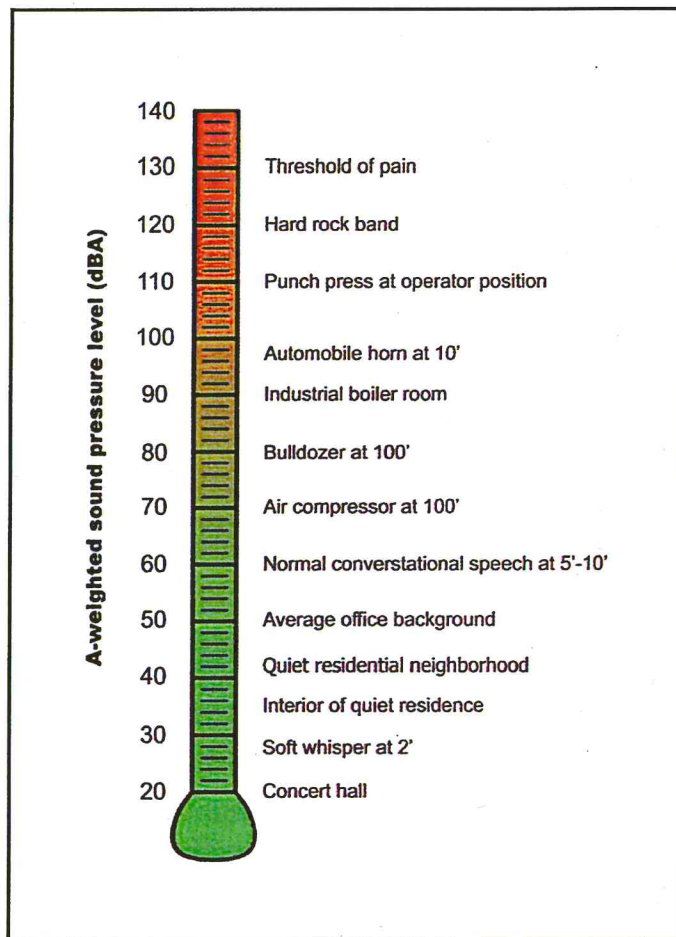


Figure A-1  
Typical Sound Levels for Common Interior and Environmental Sources

# APPENDIX B

## Manufacturer's Mechanical Equipment Sound Data

ACCU-1 Sound Data

Sound Pressure (at 30 feet) - octave band at center frequency (dB)												
Hz	63	125	250	500	1000	2000	4000	8000	Overall (dBA-Wtd)	75% Load (dBA-Wtd)	50% Load (dBA-Wtd)	25% Load (dBA-Wtd)
with Standard Sound Insulation (dB)	70	71	70	67	66	62	62	59	71	70	68	67
with Compressor Sound Enclosure (dB)	66	61	63	62	62	57	55	48	66	65	63	62

Sound Power - octave band at center frequency (dB)												
Hz	63	125	250	500	1000	2000	4000	8000	Overall (dBA-Wtd)	75% Load (dBA-Wtd)	50% Load (dBA-Wtd)	25% Load (dBA-Wtd)
with Standard Sound Insulation (dB)	98	98	98	94	94	90	90	86	99	98	96	95
with Compressor Sound Enclosure (dB)	94	88	91	89	89	84	82	75	93	92	90	89

Octave band is non 'A' weighted and overall readings are 'A' weighted. Sound data rated in accordance with AHRI Standard-370.

RAHU-1:

Unit Sound Power (dB)								
Type	63 Hz	125 Hz	250 Hz	500 Hz	1000 Hz	2000 Hz	4000 Hz	8000 Hz
Radiated:	77	71	66	78	66	59	46	51
Unit Discharge:	87	81	83	91	88	87	79	71
Unit Return:	77	71	70	86	68	69	60	51

RAHU-2:

Unit Sound Power (dB)								
Type	63 Hz	125 Hz	250 Hz	500 Hz	1000 Hz	2000 Hz	4000 Hz	8000 Hz
Radiated:	69	64	59	73	59	49	46	51
Unit Discharge:	79	74	77	84	81	77	69	66
Unit Return:	69	64	63	81	60	59	51	51

RAHU-3:

Unit Sound Power (dB)								
Type	63 Hz	125 Hz	250 Hz	500 Hz	1000 Hz	2000 Hz	4000 Hz	8000 Hz
Radiated:	77	71	66	76	66	58	46	51
Unit Discharge:	87	81	83	92	88	86	78	72
Unit Return:	77	71	70	84	68	68	59	52



# COMMISSIONER COLE'S NOTES

Display Tables

**ACCU-1**      With Sound Enclosure on Compressor

Dist to Residence  
200 ft  
**61.0** meters

Rep. Octave Freq (Hz)	A-Wt Factor, L <sub>A</sub> (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for ¼ Sphere (dB)	A-Weight Corrected L <sub>A</sub> (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	94.0	47.3	53.3	27.0	4.98E+02
125	-16.2	88.0	41.3	47.3	31.1	1.30E+03
250	-8.7	91.0	44.3	50.3	41.7	1.46E+04
500	-3.2	89.0	42.3	48.3	45.1	3.22E+04
1000	0.0	89.0	42.3	48.3	48.3	6.80E+04
2000	1.2	84.0	37.3	43.3	44.5	2.84E+04
4000	1.0	82.0	35.3	41.3	42.3	1.69E+04
8000	-1.1	75.0	28.3	34.3	33.2	2.08E+03
<b>Total =</b>					<b>52.2</b>	1.64E+05

COMMISSIONER'S OFFICE

NOTES

Display Tables

**ACCU-1**

Without Sound Enclosure

Dist to Residence  
200 ft  
**61.0** meters

Rep. Octave Freq (Hz)	A-Wt Factor, $L_A$ (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for $\frac{1}{4}$ Sphere (dB)	A-Weight Corrected $L_A$ (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	98.0	51.3	57.3	31.0	1.25E+03
125	-16.2	98.0	51.3	57.3	41.1	1.30E+04
250	-8.7	98.0	51.3	57.3	48.7	7.33E+04
500	-3.2	94.0	47.3	53.3	50.1	1.02E+05
1000	0.0	94.0	47.3	53.3	53.3	2.15E+05
2000	1.2	90.0	43.3	49.3	50.5	1.13E+05
4000	1.0	90.0	43.3	49.3	50.3	1.07E+05
8000	-1.1	86.0	39.3	45.3	44.2	2.62E+04
<b>Total =</b>					<b>58.1</b>	6.51E+05



Display Tables

**RAHU-1**

Dist to Residence 200 ft <b>61.0</b> meters
---

Rep. Octave Freq (Hz)	A-Wt Factor, $L_A$ (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for $\frac{1}{4}$ Sphere (dB)	A-Weight Corrected $L_A$ (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	77.0	30.3	36.3	10.0	9.93E+00
125	-16.2	71.0	24.3	30.3	14.1	2.59E+01
250	-8.7	66.0	19.3	25.3	16.7	4.63E+01
500	-3.2	78.0	31.3	37.3	34.1	2.56E+03
1000	0.0	66.0	19.3	25.3	25.3	3.41E+02
2000	1.2	59.0	12.3	18.3	19.5	8.97E+01
4000	1.0	46.0	-0.7	5.3	6.3	4.26E+00
8000	-1.1	51.0	4.3	10.3	9.2	8.28E+00
<b>Total =</b>					<b>34.9</b>	3.08E+03



**ACCU-1** With Sound Enclosure on Compressor

Dist to Residence  
150 ft  
**45.7** meters

Rep. Octave Freq (Hz)	A-Wt Factor, $L_A$ (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for $\frac{1}{4}$ Sphere (dB)	A-Weight Corrected $L_A$ (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	94.0	49.8	55.8	29.5	8.85E+02
125	-16.2	88.0	43.8	49.8	33.6	2.31E+03
250	-8.7	91.0	46.8	52.8	44.2	2.60E+04
500	-3.2	89.0	44.8	50.8	47.6	5.73E+04
1000	0.0	89.0	44.8	50.8	50.8	1.21E+05
2000	1.2	84.0	39.8	45.8	47.0	5.04E+04
4000	1.0	82.0	37.8	43.8	44.8	3.01E+04
8000	-1.1	75.0	30.8	36.8	35.7	3.70E+03
<b>Total =</b>					<b>54.6</b>	2.92E+05





**RAHU-1**

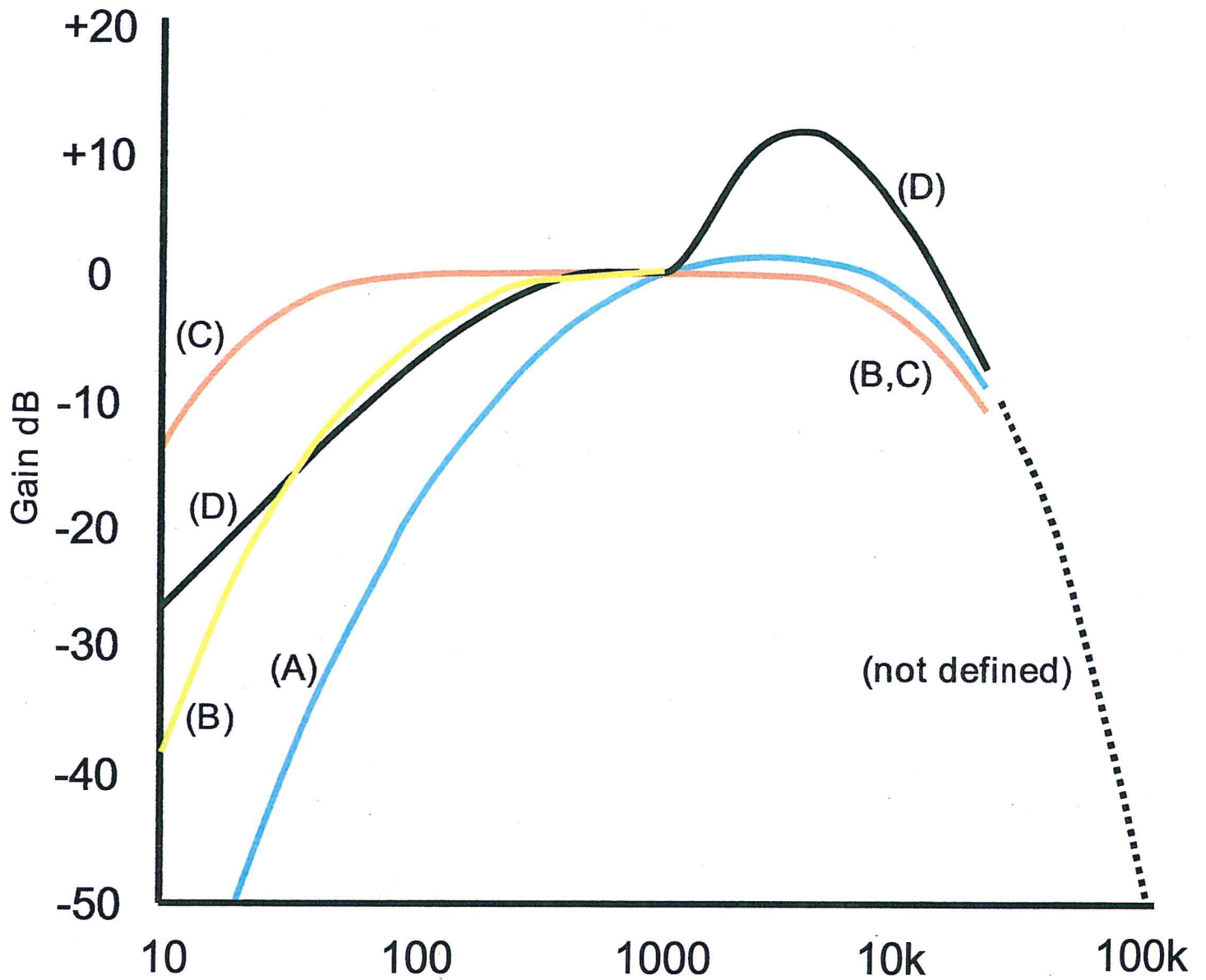
Dist to Residence  
150 ft  
**45.7 meters**

Rep. Octave Freq (Hz)	A-Wt Factor, $L_A$ (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for $\frac{1}{4}$ Sphere (dB)	A-Weight Corrected $L_A$ (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	77.0	32.8	38.8	12.5	1.77E+01
125	-16.2	71.0	26.8	32.8	16.6	4.61E+01
250	-8.7	66.0	21.8	27.8	19.2	8.23E+01
500	-3.2	78.0	33.8	39.8	36.6	4.55E+03
1000	0.0	66.0	21.8	27.8	27.8	6.06E+02
2000	1.2	59.0	14.8	20.8	22.0	1.60E+02
4000	1.0	46.0	1.8	7.8	8.8	7.57E+00
8000	-1.1	51.0	6.8	12.8	11.7	1.47E+01
<b>Total =</b>					<b>37.4</b>	5.48E+03



Source of sound	Sound Level (dB)
Softest possible (reference) sound	0
Empty concert hall	20
Soft whisper at 2 ft	30
Interior of quiet residence	35
Outdoor of quiet residence	40
Average office background	50
Normal conversation at 5-10 ft	60
Air compressor at 100 ft	70
Bulldozer at 100 ft	80
Automobile horn at 10 ft	90
Industrial boiler room	100
Punch-press at operator position	110
Hardrock band concert	120
Threshold of pain	130





A-weighting (blue), B (yellow), C (red), and D-weighting (blk)



Display Tables

**ACCU-1** With Sound Enclosure on Compressor

Dist to Residence 200 ft <b>61.0</b> meters
---

Rep. Octave Freq (Hz)	A-Wt Factor, L <sub>A</sub> (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for ¼ Sphere (dB)	A-Weight Corrected L <sub>A</sub> (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	94.0	47.3	53.3	27.0	4.98E+02
125	-16.2	88.0	41.3	47.3	31.1	1.30E+03
250	-8.7	91.0	44.3	50.3	41.7	1.46E+04
500	-3.2	89.0	42.3	48.3	45.1	3.22E+04
1000	0.0	89.0	42.3	48.3	48.3	6.80E+04
2000	1.2	84.0	37.3	43.3	44.5	2.84E+04
4000	1.0	82.0	35.3	41.3	42.3	1.69E+04
8000	-1.1	75.0	28.3	34.3	33.2	2.08E+03
<b>Total =</b>					<b>52.2</b>	1.64E+05





Display Tables

**ACCU-1**

Without Sound Enclosure

Dist to Residence 200 ft <b>61.0</b> meters
---

Rep. Octave Freq (Hz)	A-Wt Factor, L <sub>A</sub> (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for ¼ Sphere (dB)	A-Weight Corrected L <sub>A</sub> (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	98.0	51.3	57.3	31.0	1.25E+03
125	-16.2	98.0	51.3	57.3	41.1	1.30E+04
250	-8.7	98.0	51.3	57.3	48.7	7.33E+04
500	-3.2	94.0	47.3	53.3	50.1	1.02E+05
1000	0.0	94.0	47.3	53.3	53.3	2.15E+05
2000	1.2	90.0	43.3	49.3	50.5	1.13E+05
4000	1.0	90.0	43.3	49.3	50.3	1.07E+05
8000	-1.1	86.0	39.3	45.3	44.2	2.62E+04
<b>Total =</b>					<b>58.1</b>	6.51E+05



Display Tables

**RAHU-1**

Dist to Residence 200 ft <b>61.0</b> meters
---

Rep. Octave Freq (Hz)	A-Wt Factor, $L_A$ (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for $\frac{1}{4}$ Sphere (dB)	A-Weight Corrected $L_A$ (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	77.0	30.3	36.3	10.0	9.93E+00
125	-16.2	71.0	24.3	30.3	14.1	2.59E+01
250	-8.7	66.0	19.3	25.3	16.7	4.63E+01
500	-3.2	78.0	31.3	37.3	34.1	2.56E+03
1000	0.0	66.0	19.3	25.3	25.3	3.41E+02
2000	1.2	59.0	12.3	18.3	19.5	8.97E+01
4000	1.0	46.0	-0.7	5.3	6.3	4.26E+00
8000	-1.1	51.0	4.3	10.3	9.2	8.28E+00
<b>Total =</b>					<b>34.9</b>	3.08E+03



**ACCU-1** With Sound Enclosure on Compressor

Dist to Residence  
150 ft  
**45.7** meters

Rep. Octave Freq (Hz)	A-Wt Factor, $L_A$ (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for $\frac{1}{4}$ Sphere (dB)	A-Weight Corrected $L_A$ (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	94.0	49.8	55.8	29.5	8.85E+02
125	-16.2	88.0	43.8	49.8	33.6	2.31E+03
250	-8.7	91.0	46.8	52.8	44.2	2.60E+04
500	-3.2	89.0	44.8	50.8	47.6	5.73E+04
1000	0.0	89.0	44.8	50.8	50.8	1.21E+05
2000	1.2	84.0	39.8	45.8	47.0	5.04E+04
4000	1.0	82.0	37.8	43.8	44.8	3.01E+04
8000	-1.1	75.0	30.8	36.8	35.7	3.70E+03
<b>Total =</b>					<b>54.6</b>	2.92E+05



**RAHU-1**

Dist to Residence  
150 ft  
**45.7** meters

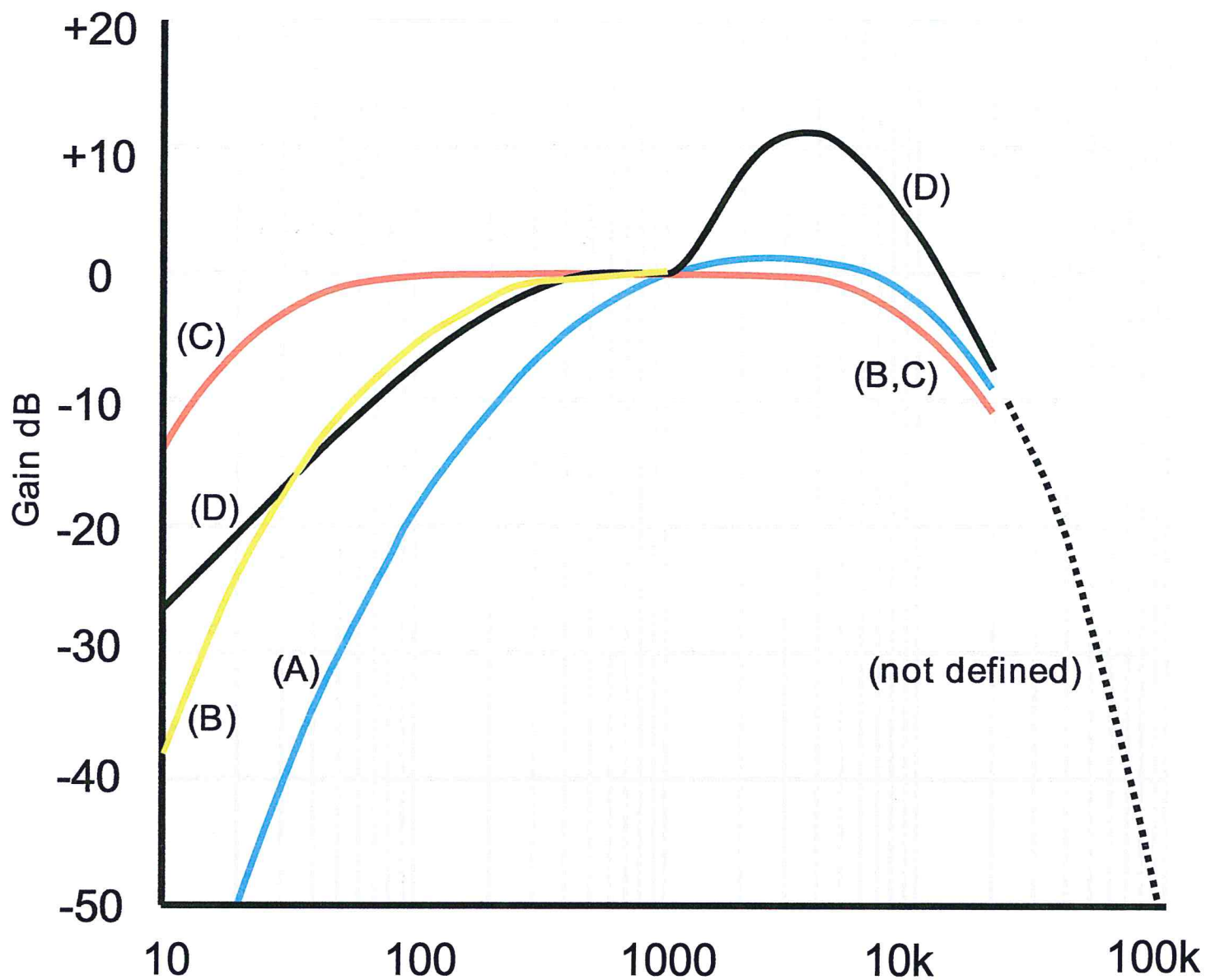
Rep. Octave Freq (Hz)	A-Wt Factor, L <sub>A</sub> (dB)	Output Sound Power (dB)	Distance Corrected Level (dB)	Corrected for ¼ Sphere (dB)	A-Weight Corrected L <sub>A</sub> (dBA-wtd)	Associated Pressure (uPa)
63	-26.4	77.0	32.8	38.8	12.5	1.77E+01
125	-16.2	71.0	26.8	32.8	16.6	4.61E+01
250	-8.7	66.0	21.8	27.8	19.2	8.23E+01
500	-3.2	78.0	33.8	39.8	36.6	4.55E+03
1000	0.0	66.0	21.8	27.8	27.8	6.06E+02
2000	1.2	59.0	14.8	20.8	22.0	1.60E+02
4000	1.0	46.0	1.8	7.8	8.8	7.57E+00
8000	-1.1	51.0	6.8	12.8	11.7	1.47E+01
<b>Total =</b>					<b>37.4</b>	5.48E+03





Source of sound	Sound Level
	(dB)
Softest possible (reference) sound	0
Empty concert hall	20
Soft whisper at 2 ft	30
Interior of quiet residence	35
Outdoor of quiet residence	40
Average office background	50
Normal conversation at 5-10 ft	60
Air compressor at 100 ft	70
Bulldozer at 100 ft	80
Automobile horn at 10 ft	90
Industrial boiler room	100
Punch-press at operator position	110
Hardrock band concert	120
Threshold of pain	130





A-weighting (blue), B (yellow), C (red), and D-weighting (blk)





# ARCHITECT CLARIFICATION

Jason Sergeant <jason.sergeant@ci.evansville.wi.gov>

## Evansville MS Review Comments

Ryan Sands <rsands@brayarch.com>

Mon, Oct 14, 2019 at 9:41 AM

To: Ryan Birschbach <rbirschbach@kapurinc.com>, Jason Sergeant <jason.sergeant@ci.evansville.wi.gov>

Cc: Andrew Iverson <aiverson@brayarch.com>, "Roth, Jerry (rothj@evansville.k12.wi.us)" <rothj@evansville.k12.wi.us>

Good Morning Jason,

I'm writing in response to the comment on your review letter regarding the screening for HVAC equipment. Please find the final roof plan and exterior elevations attached, which show the two locations of screening for HVAC equipment. One location faces north in between the higher gym roof and music department roof, and the other is on top of the portion of the existing building that remains. In both instances, the screening is clad in the same wood-look fiber cement board product that is being used as an accent material on the building, so it fits in with the building's exterior material palette. The specification for the fiber cement board product is also attached for your reference.

Please review and let me know if you have any questions.

Thanks,

Ryan



**Ryan C. Sands**

AIA, NCARB

Architect

O 414.226.0200

D 414.290.1981

C 414.940.6036

**BRAY ARCHITECTS**

davenport • milwaukee • sheboygan  
www.brayarch.com



---

**From:** Ryan Birschbach, PE <rBirschbach@kapurinc.com>  
**Sent:** Friday, October 11, 2019 8:42 AM  
**To:** Jason Sergeant <jason.sergeant@ci.evansville.wi.gov>  
**Cc:** Ryan Sands <rsands@brayarch.com>; Andrew Iverson <aiverson@brayarch.com>  
**Subject:** RE: Evansville MS Review Comments

[EXTERNAL EMAIL]

Jason,

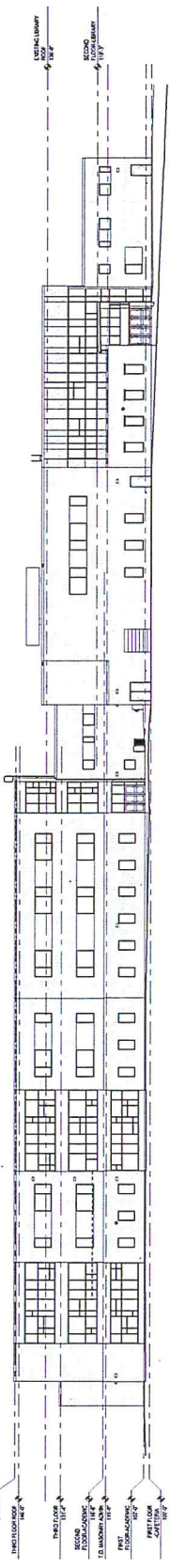
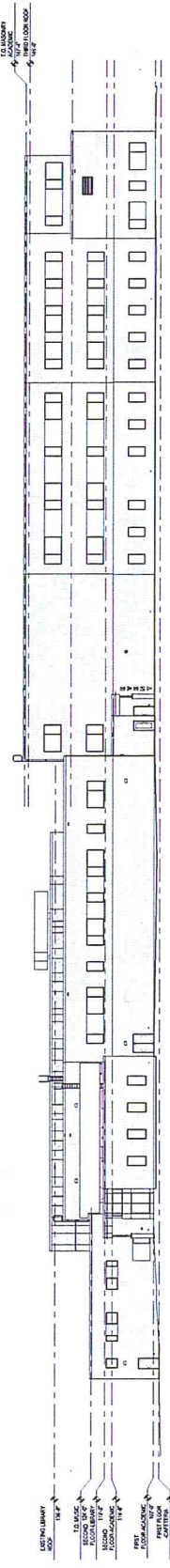
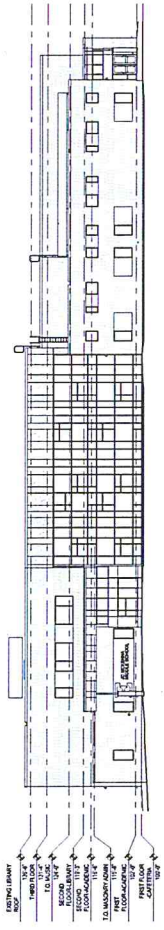
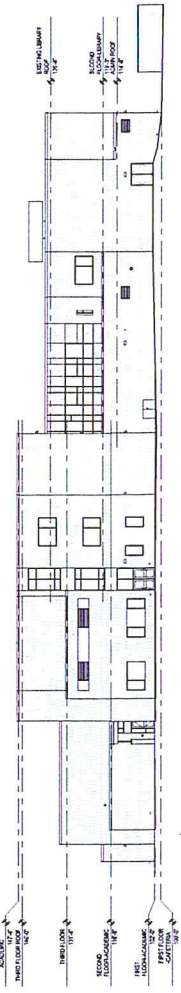
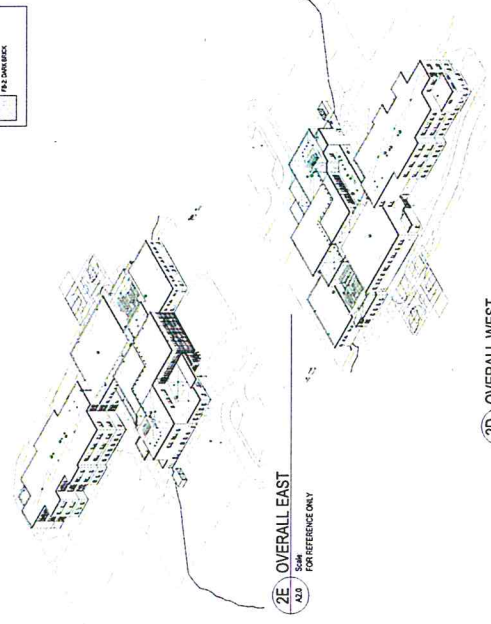
Attached is our revised landscape plan showing similar if not more coverage of the southern property line.

# ARCHITECT CLASSIFICATION



LEGEND MATERIALS/COLOR

[Pattern]	FORM FINISH BRICK (SEE WALL TYPE NO.)
[Pattern]	ROCK PANEL WOOD (SEE WALL TYPE NO.)
[Pattern]	FR-1 LIGHT BRICK
[Pattern]	FR-2 DARK BRICK





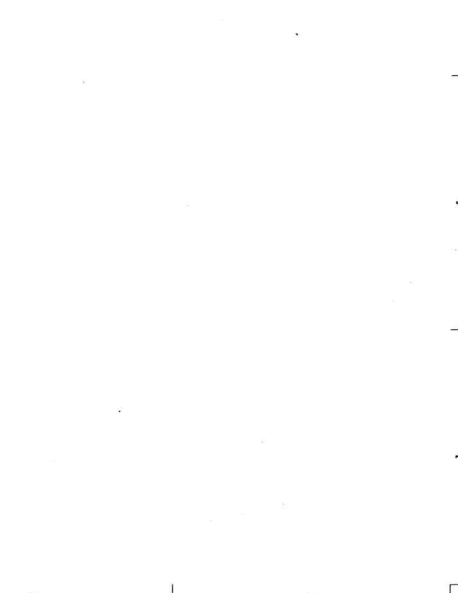
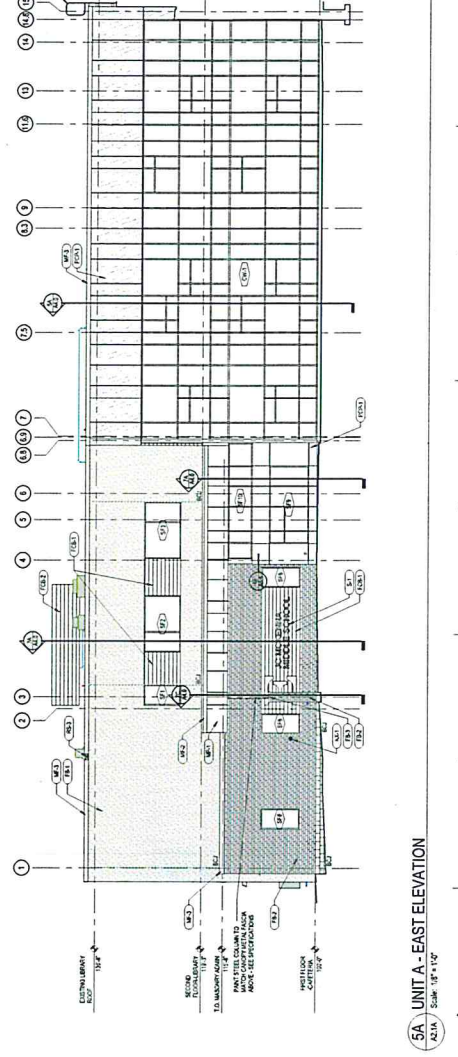
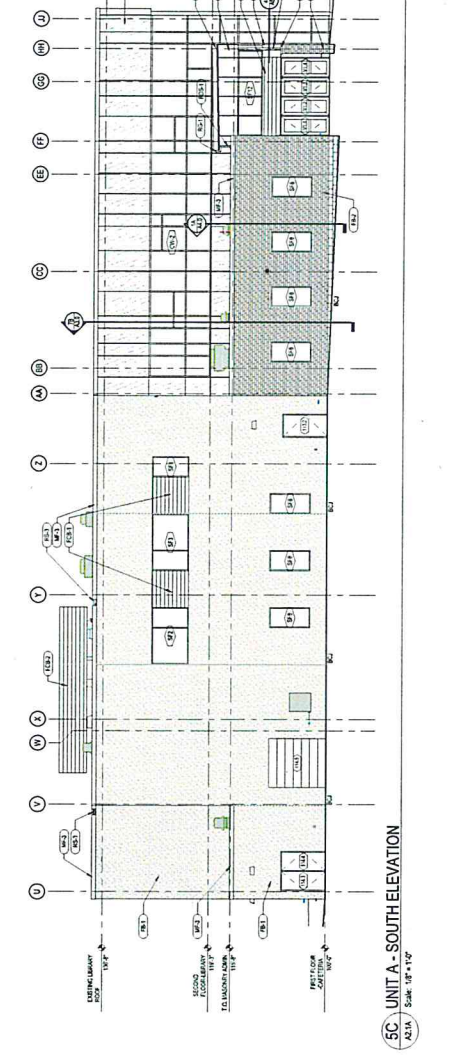
**KEYNOTE LEGEND**

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**EXTERIOR MATERIAL LEGEND**

101	1/2" x 1" x 4" BRICK
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**7D UNIT A - WEST ELEVATION**  
 Scale: 1/8" = 1'-0"



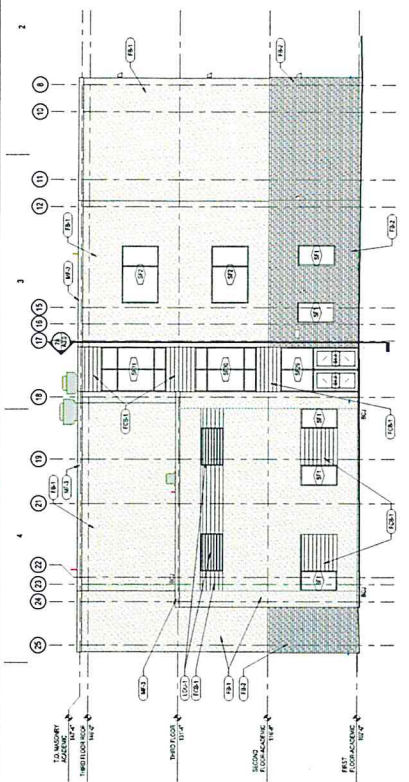


**KEYNOTE LEGEND**

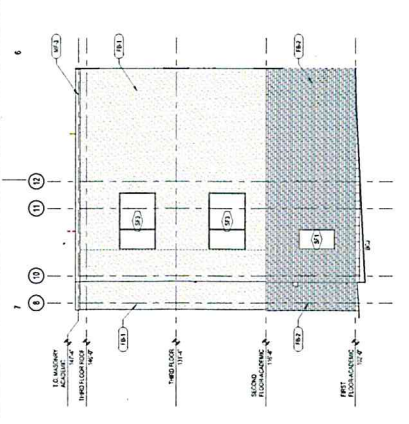
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**EXTERIOR MATERIAL LEGEND**

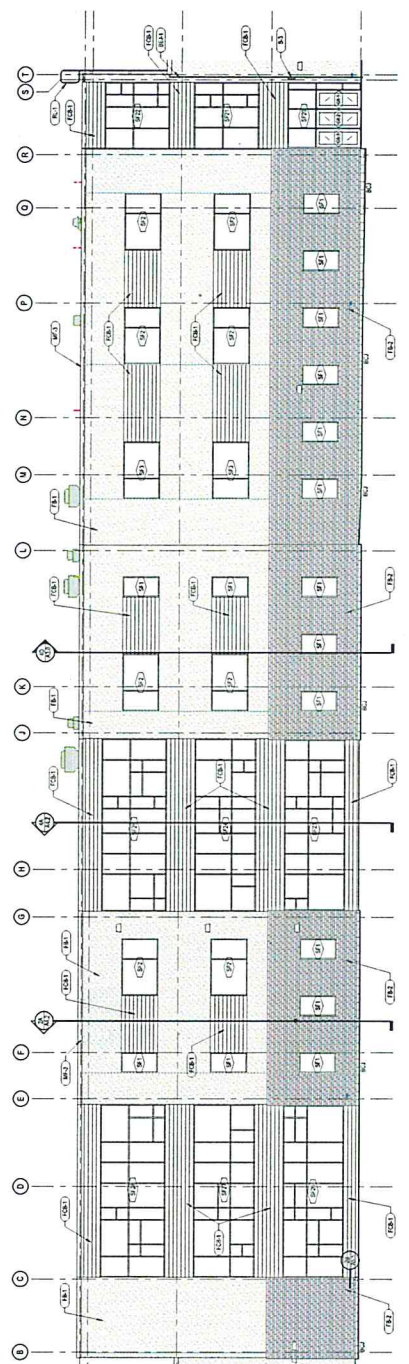
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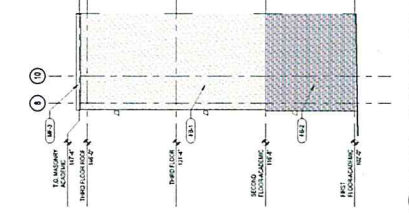
**5D UNIT C - WEST ELEVATION**  
 A2.1C / Scale 1/8" = 1'-0"



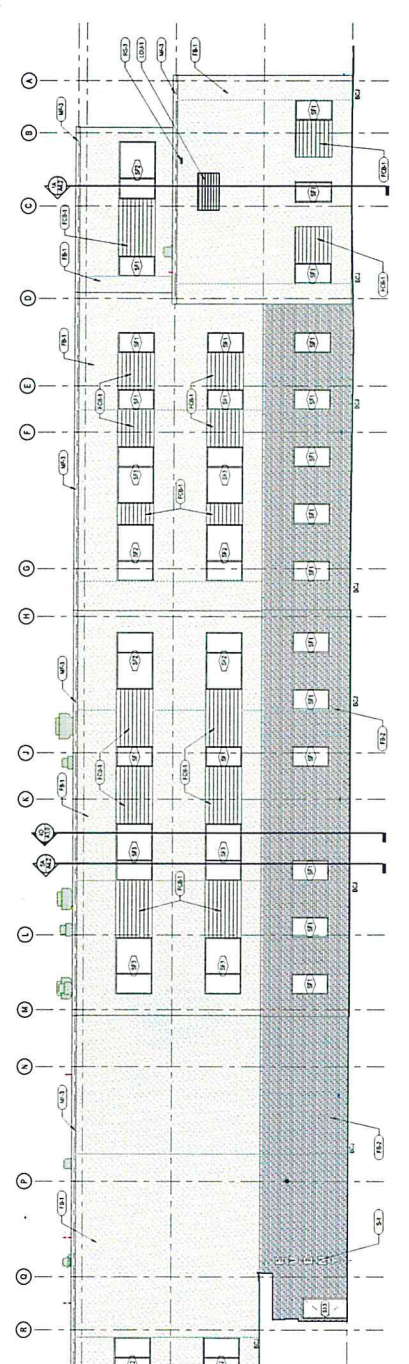
**7D UNIT C - EAST ELEVATION**  
 A2.1C / Scale 1/8" = 1'-0"



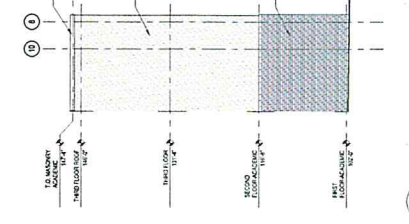
**6B UNIT C - SOUTH ELEVATION**  
 A2.1C / Scale 1/8" = 1'-0"



**7B UNIT C - EAST ELEVATION 2**  
 A2.1C / Scale 1/8" = 1'-0"



**6A UNIT C - NORTH ELEVATION**  
 A2.1C / Scale 1/8" = 1'-0"



**7A UNIT C - WEST ELEVATION**  
 A2.1C / Scale 1/8" = 1'-0"



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SECTION 07 46 48 – FIBER CEMENT BOARD SIDING

PART 1 – GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and General Provisions of the Contract, including General and Supplementary Conditions and Division 1 Specification Sections apply to this section.
- B. Comply with Wisconsin Commercial Building Codes/International Building Code (IBC).
- C. Comply with ADA Standards for Accessible Design - Latest Edition.

1.2 SUMMARY

- A. Exterior, panelized fiber cement cladding system and accessories to complete a drained and back-ventilated rainscreen.
- B. Interior fiber cement panelized cladding system and accessories

1.3 RELATED SECTIONS

- A. Division 04 Section "Unit Masonry".
- B. Division 05 Section "Structural Steel".
- C. Division 05 Section "Cold Formed Metal Framing".
- D. Division 06 Section "Rough Carpentry".
- E. Division 06 Section "Interior and Exterior Finish Carpentry".
- F. Division 07 Section "Thermal Insulation".
- G. Division 07 Section "Sheet Metal Flashing and Trim".
- H. Division 07 Section "Joint Sealants".
- I. Division 08 Section for Aluminum Entrance and Storefronts.
- J. Division 08 Section "Glazed Curtain Walls and Entrances".
- K. Division 09 Section "Gypsum Board and Non-Structural Metal Framing Assemblies".

1.4 REFERENCES

- A. ASTM C1185, Standard Test Methods for Sampling and Testing Non-Asbestos Fiber Cement Flat Sheet, Roofing and Siding, Shingles and Clapboards.
- B. ASTM E228, Standard Test Method for linear Thermal Expansion of Solid Materials with Vitreous Silica Dilatometer.
- C. ASTM E330, Standard Test Method for Structural Performance of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference.
- D. ASTM E84, Standard Test Method for Surface Burning Characteristics of Building Materials.

A. American Architectural Manufacturers Association (AAMA):

- 1. AAMA 509-14 – Voluntary Test and Classification Method of Drained and Back Ventilated Rain Screen Wall Cladding Systems

B. ASTM International (ASTM):

- 1. ASTM C 518 - Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus.
- 2. ASTM C 1185 - Standard Test Methods for Sampling and Testing Non-Asbestos Fiber Cement.
  - a. ASTM C 1186 – Standard Specification for Flat Fiber-Cement Sheets.
- 3. ASTM E-84 - Standard Test for Surface Burning Characteristics of Building Materials.
- 4. ASTM E 119 - Standard Test Methods for Fire Tests of Building Construction and

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Materials.

5. ASTM E 228 - Standard Test Method for Linear Thermal Expansion of Solid Materials with a Vitreous Silica Dilatometer.
6. ASTM E 330 - Standard Test Method for Structural Performance of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference.
7. ASTM E 331 - Standard Test Method for Water Penetration of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference.

C. National Fire Protection Association (NFPA):

1. NFPA 285 - Fire Test Method for Exterior Wall Assemblies Containing Combustible Material.
2. NFPA 268 – Ignition Resistance of Exterior Wall Assemblies.

1.5 SUBMITTALS

- A. Submit in accordance with Section 01 33 00 – Submittal Procedures.
- B. Drawings: Submit detailed drawings showing installation details.
- C. Product Data: Submit manufacturer's product description, indicating material types and thicknesses, and installation details.
- D. Samples: Submit samples of each product type proposed for use.
- E. Manufacturer's Details: Submit drawings (.dwg, .rvt, and/or .pdf formats), including plans, sections, showing installation details that demonstrate product dimensions, edge/termination conditions/treatments, compression and control joints, corners, openings, and penetrations.
- F. Certificates: Submit documents certifying that products meet or exceed requirements herein.

1.6 QUALITY ASSURANCE

A. Manufacturer Qualifications:

1. All fiber cement panels specified in this section must be supplied by a manufacturer with a minimum of 10 years of experience in fabricating and supplying fiber cement cladding systems.
  - a. Products covered under this section are to be manufactured in an ISO 9001 certified facility.
2. Provide technical and design support as needed regarding installation requirements and warranty compliance provisions.

B. Installer Qualifications: All products listed in this section are to be installed by a single installer trained by manufacturer or representative.

C. Mock-Up: Provide a mock-up for evaluation of the product and application workmanship.

1. Do not proceed with remaining work until workmanship, color, and sheen are approved by Architect.

D. Pre-Installation Meetings: Prior to beginning installation, conduct conference to verify and discuss substrate conditions, manufacturer's installation instructions and warranty requirements, and project requirements.

1.7 DELIVERY, STORAGE, AND HANDLING

- A. Panels must be stored flat and kept dry before installation. A waterproof cover over panels and accessories should be used at all times prior to installation. Do not stack pallets more than two high. Refer to the information included on each pallet.
- B. If panels are exposed to water or water vapor prior to installation, allow to completely dry before

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installing. Failure to do so may result in panel shrinkage at ship lap joints, and such action may void warranty.

- C. Panels MUST be carried on edge. Do not carry or lift panels flat. Improper handling may cause cracking or panel damage.
- D. Direct contact between the panels and the ground should be avoided at all times. It is necessary to keep panels clean during installation process.

1.8 PROJECT CONDITIONS

- A. Maintain environmental conditions (temperature, humidity, and ventilation) within limits recommended by manufacturer for optimum results. Do not install products under environmental conditions outside manufacturer's absolute limits.
- B. Field Measurements: Verify actual measurements/openings by field measurements performed by the installer prior to release for fabrication. Recorded measurements to be indicated on shop drawings based on field measurements provided by the installer. Coordinate field measurements and fabrication schedule with construction progress to avoid construction delays.

1.9 WARRANTY

- A. Provide manufacturer's 15-year warranty against manufactured defects in fiber cement panels. Additional 5-year extension available when refinished in year 14-15.
- B. Provide manufacturer's 15-year warranty against manufactured defects in panel finish.
- C. Warranty provides for the original purchaser. See warranty for detailed information on terms, conditions and limitations.

PART 2 – PRODUCTS

2.1 MATERIAL SUPPLIER

- A. Acceptable Manufacturer: Nichiha Corporation, 18-19 Nishiki 2-chome Naka-ku, Nagoya, Aichi 460-8610, Japan.
- B. Acceptable Manufacturer's Representative: Nichiha USA, Inc., 6465 E. Johns Crossing, Suite 250, Johns Creek, GA 30097. Toll free: 1.866.424.4421, Office: 770.805.9466, Fax: 770.805.9467, [www.nichiha.com](http://www.nichiha.com).
- C. Substitutions: Requests for substitutions must be submitted 10 days prior to bidding.
  - 1. Basis of Design Product: Nichiha VintageWood (FCB-1).
    - a. Profile colors: Cedar.
    - b. Profiles: Wood plank texture with three, 3/8" grooves running lengthwise, spaced 5-5/8" apart.
    - c. Accessory/Component Options:
      - 1) Manufactured Corners with 3-1/2" returns for each profile color.
      - 2) Aluminum trim options: Corner Key, Open Outside Corner, H-Mold, J-Mold, Compression Joint, Inside Corner
        - a) Finish: Cedar.
      - 3) Essential Flashing System: Starter, Overhang.
        - a) Finish: Matte black.
    - d. Dimensions:
      - 1) AWP-3030: 455mm (17-7/8") (h) x 3,030 mm (119-5/16") (l).
    - e. Panel Thickness: 16 mm (5/8").

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- f. Weight: AWP-3030: 57.32 lbs. per panel.
- g. Coverage: 14.81 sq. ft. per panel (3030).
- h. Factory sealed on six [6] sides.

2.2 MATERIALS

- A. Fiber cement panels manufactured from a pressed, stamped, and autoclaved mix of Portland cement, fly ash, silica, recycled rejects, and wood fiber bundles.
- B. Panel surface pre-finished and machine applied.
- C. Panels profiled along 3030mm edges so that the long joints between the installed panels are ship-lapped.
- D. Factory-applied sealant gasket added to top panel edge; all 3030mm edge joints contain a factory sealant.

2.3 PERFORMANCE REQUIREMENTS

- A. Fiber Cement Cladding – Must comply with ASTM C-1186, Type A, Grade II requirements:
  - 1. Wet Flexural Strength: Result: 1418 psi, Lower Limit: 1015 psi.
  - 2. Water Tightness: No water droplets observed on any specimen.
  - 3. Freeze-thaw: No damage or defects observed.
  - 4. Warm Water: No evidence of cracking, delamination, swelling, or other defects observed.
  - 5. Heat-Rain: No crazing, cracking, or other deleterious effects, surface or joint changes observed in any specimen.
- B. Mean Coefficient of Linear Thermal Expansion (ASTM E-228): Max  $1.0 \times 10^{-5}$  in./in. F.
- C. Surface Burning (CAN-ULC S102/ASTM E-84): Flame Spread: 0, Smoke Developed: 0.
- D. Wind Load (ASTM E-330): Contact manufacturer for ultimate test pressure data corresponding to framing type, dimensions, fastener type, and attachment clips. Project engineer(s) must determine Zone 4 and 5 design pressures based on project specifics.
  - 1. Minimum lateral deflection: L/120.
- E. Water Penetration (ASTM E-331): No water leakage observed into wall cavity.
- F. Steady-State Heat Flux and Thermal Transmission Properties Test (ASTM C-518): 16mm thick panel thermal resistance R Value of 0.47.
- G. Fire Resistant (ASTM E-119): The wall assembly must successfully endure 60-minute fire exposure without developing excessive unexposed surface temperature or allowing flaming on the unexposed side of the assembly.
- H. Ignition Resistance (NFPA 268): No sustained flaming of panels, assembly when subjected to a minimum radiant heat flux of  $12.5 \text{ kW/m}^2 \pm 5\%$  in the presence of a pilot ignition source for a 20-minute period.
- I. Fire Propagation (NFPA 285): Wall assembly of Nichiha AWP, Ultimate Clips and Starter Track, Tyvek Commercial Wrap, 1/2" Densglass Gold Sheathing, 16" o.c. 18 gauge steel studs, mineral wool in-cavity insulation, and interior 5/8" Type X gypsum met the acceptance criteria of NFPA 285.
- J. Fire Propagation (CAN/ULC S-134): Wall assembly of Nichiha AWP, Ultimate Clips and Starter Track, Tyvek Housewrap, 5/8" FRT plywood, 16" o.c. 2x wood studs, fiberglass in-cavity insulation, and interior 5/8" Type X gypsum met the acceptance criteria of CAN/ULC S-134.
- K. Drained and Back Ventilated Rainscreen (AAMA 509-14): System classifications: W1, V1.
- L. Florida Building Code - Test Protocol HVHZ (TAS 202, 203): Horizontal Application Design Pressure: 95 psf, Vertical Application Design Pressure: 85 psf.

2.4 INSTALLATION COMPONENTS

- A. Ultimate Clip System:
  - 1. Starter Track:



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- a. Horizontal Panel Installations - FA 700 – 3,030mm (l) galvalume coated steel.
  - b. Vertical Panel Installations (AWP-3030 only) – FA 710T – 3,030mm (l) galvalume coated steel.
2. Panel Clips: JEL 778 “Ultimate Clip II” (10mm rainscreen for 16mm AWP) – Zinc-Aluminum-Magnesium alloy coated steel.
    - a. Joint Tab Attachments (included) – used at all AWP-1818 panel to panel vertical joints, NOT used with AWP-3030 installations.
  3. Corner Clips: JE 777C (10mm rainscreen for 5/8” AWP Manufactured Corners) -- Zinc-Aluminum-Magnesium alloy coated steel.
  4. Single Flange Sealant Backer – FHK 1015 R (10mm) – 6.5’ (l) fluorine coated galvalume.
  5. Double Flange Sealant Backer – FH 1015 R (10mm) – 10’ (l) fluorine coated galvalume.
  6. Corrugated Spacer – FS 1005 (5mm), FS 1010 (10mm) – 4’ (l).
- B. Aluminum Trim: Paint primed trim as specified in finish schedule.
- C. Essential Flashing System:
1. Starter – main segments (3,030mm), inside corners, outside corners
  2. Overhang – main segments (3,030mm), inside corners, outside corners, joint clips
- D. Fasteners: Corrosion resistant fasteners, such as hot-dipped galvanized screws appropriate to local building codes and practices must be used. Use Stainless Steel fasteners in high humidity and high-moisture regions. Panel manufacturer is not liable for corrosion resistance of fasteners. Do not use aluminum fasteners, staples or fasteners that are not rated or designed for intended use. See manufacturer’s instructions for appropriate fasteners for construction method used.
- E. Flashing: Flash all areas specified in manufacturer’s instructions. Do not use raw aluminum flashing. Flashing must be galvanized, anodized, or PVC coated.
- F. Sealant: Sealant shall comply with ASTM C920, Class 35.

### PART 3 – EXECUTION

#### 3.1 EXAMINATION

- A. Verification of Conditions:
1. Fiber cement panels can be installed over braced wood, steel studs and sheathing including plywood, OSB, plastic foam (1” or less) or fiberboard sheathing. Fiber cement panels can also be installed over Structural Insulated Panels (SIP’s), Concrete Masonry Units (CMU’s) and Concrete Block Structures (CBS’s) with furring strips, and Pre-Engineered Metal Construction. Insulated Concrete Forms (ICFs) require added measures. Consult with Nichiha Technical Services.
  2. Allowable stud spacing: 16” o.c. maximum.
  3. A weather resistive barrier is required when installing fiber cement panels. Use an approved weather resistive barrier (WRB) as defined by the 2015 IBC or IRC. Refer to local building codes.
  4. Appropriate metal flashing should be used to prevent moisture penetration around all doors, windows, wall bottoms, material transitions and penetrations. Refer to local building codes for best practices.
- B. Examine site to ensure substrate conditions are within alignment tolerances for proper installation.
- C. Do not begin installation until unacceptable conditions have been corrected.
- D. Do not install panels or components that appear to be damaged or defective. Do not install wet panels.

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3.2 TOLERANCE

- A. Wall surface plane must be plumb and level within +/- ¼ inch in 20 feet in any direction.
1. One layer of Nichiha 5mm (~3/16") Spacer may be used as shim.

3.3 INSTALLATION

- A. General: Install products in accordance with the latest installation guidelines of the manufacturer and all applicable building codes and other laws, rules, regulations and ordinances. Review all manufacturer installation, maintenance instructions, and other applicable documents before installation.

1. Consult with your local dealer or Nichiha Technical Department before installing any Nichiha fiber cement product on a building higher than 45 feet or three stories or for conditions not matching prescribed standard installation guide requirements and methods. A Technical Design Review (TDR) process is available to evaluate project feasibility.
2. Vertical Control/Expansion Joints are required with AWP-1818, for walls wider than 30 feet, within 2-12 feet of outside corners finished with metal trim and approximately every 30 feet thereafter.
  - a. Vertical Control/Expansion Joints are required at each AWP-3030 vertical joint, or H-Mold trim may be used instead.
3. Horizontal/Compression Joints are required for multi-story installations of AWP. Locate joints at floor lines. Joints are flashed minimum ½" breaks. Do not caulk. Refer to installation guide(s).
  - a. Wood framed buildings of three or more floors require a compression joint at each floor.
  - b. Steel framed buildings (including reinforced concrete core with LGMF exterior walls) of more than three floors (or 45 feet) require a compression joint every 25 feet at a floor line.

B. Panel Cutting

1. Always cut fiber cement panels outside or in a well-ventilated area. Do not cut the products in an enclosed area.
2. Always wear safety glasses and NIOSH/OSHA approved respirator whenever cutting, drilling, sawing, sanding or abrading the products. Refer to manufacturer SDS for more information.
3. Use a dust-reducing circular saw with a diamond-tipped or carbide-tipped blade.
  - a. Recommended circular saw: Makita 7-1/4" Circular Saw with Dust Collector (#5057KB).
  - b. Recommended blade: Tenryu Board-Pro Plus PCD Blade (#BP-18505).
  - c. Shears (electric or pneumatic) or jig saw can be used for complicated cuttings, such as service openings, curves, radii and scrollwork.
4. Silica Dust Warning: Fiber cement products may contain some amounts of crystalline silica, a naturally occurring, potentially hazardous mineral when airborne in dust form. Consult product SDS or visit <https://www.osha.gov/dsg/topics/silicacrystalline/>.
5. Immediately clean dust from cut panels as it may bind to the finish.

3.6 FINISHING AND MAINTENANCE

- A. Use exterior grade high-quality sealant that complies with ASTM C-920 (for finished products) for all gaps that require filling with sealant. Follow the manufacturer's (Nichiha) written

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instructions for use and sealant as recommended by Nichiha. All caulking is the responsibility of this contractor.

- B. All field cut edges must be covered with fiber cement primer or paint.
- C. Dents, chips, scratches, etc. on the products shall be filled with exterior grade cementitious patching or putty. Follow the manufacturer's instructions for use.
- D. Cleaning: Rub boards with a soft brush using a diluted neutral detergent. Do not use hard tools such as a wire brush or other abrasive materials.

END OF SECTION 07 46 48

