

ENROLLED ORDINANCE 168-14

APPROVE LAND USE PERMIT TO MAMMOTH SPRINGS LLC FOR SITE DEVELOPMENT ACTIVITIES NECESSARY TO CONSTRUCT RESIDENTIAL AND RETAIL BUILDINGS AND ASSOCIATED INFRASTRUCTURE AND APPROVE BUGLINE TRAIL RELOCATION AGREEMENT

WHEREAS, Waukesha County owns property located in the Village of Sussex in Section 26, Township 8 North, Range 19 East for the purpose of the Bugline Trail use, and

WHEREAS, Mammoth Springs LLC wishes to conduct site development activities on the Bugline Trail Corridor, for the purpose of constructing residential and retail buildings and associated infrastructure, and

WHEREAS, it is necessary to provide a Land Use Permit from Waukesha County to Mammoth Springs LLC for the purpose of constructing site improvements, and

WHEREAS, Mammoth Springs LLC has agreed to construct an Alternate Bugline Trail through adjacent property owned by Mammoth Springs LLC and the Village of Sussex, and

WHEREAS, the Village of Sussex desires Mammoth Springs LLC's development and is willing to provide land and improvements for the development of the Alternate Bugline Trail to encourage the County to relocate the Bugline Trail Section that runs through Mammoth Springs LLC's property, and

WHEREAS, ownership of the land on which the Alternate Bugline Trail is constructed shall be transferred by deed to Waukesha County by December 31, 2015, and

WHEREAS, the Bugline Trail shall remain open during construction of site development activities via a detour route provided by Mammoth Springs LLC and the Village of Sussex and approved by Waukesha County, and

WHEREAS, in the consideration of said Land Use Permit, Mammoth Springs LLC shall construct the Alternate Bugline Trail and appropriate warning and traffic signage to Wisconsin Department of Transportation Bicycle Facilities Design Handbook and Americans with Disabilities Act standards and maintain the portion of the trail that is deeded to Waukesha County and all the appurtenances thereto, and

WHEREAS, the Village of Sussex shall deed a portion of its right-a-way along Main Street to become part of the Bugline Trail and provide a detour route, and

WHEREAS, Waukesha County, the Village of Sussex and Mammoth Springs LLC will reduce each party's agreements and obligations in association with the project to a written contract, subject to the approval of terms by Waukesha County Corporation Counsel.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Land Use Permit between Mammoth Springs LLC and Waukesha County, which permits

Referred on: 05/09/13	File Number: 168-O-014	Referred to: LU – FI
-----------------------	------------------------	----------------------

the construction of residential and retail buildings and associated infrastructure across those lands known as the Bugline Trail Corridor located in the Northwest corner of Section 26, Township 8 North, Range 19 East, and is on file in the Office of the Register of Deeds, is hereby approved.

BE IT FURTHER ORDAINED that the Bugline Trail Relocation Agreement is approved subject to and conditioned upon terms approved by Corporation Counsel designed to permit the County to receive a section of the Bugline Trail fully improved with the maintenance responsibilities shared by Mammoth Springs LLC and the Village of Sussex.

BE IT FURTHER ORDAINED that the authorized signatories for Waukesha County shall execute the Land Use Permit on behalf of Waukesha County.

BE IT FURTHER ORDAINED that the authorized signatories for Waukesha County shall execute the Bugline Relocation Agreement on behalf of Waukesha County.

APPROVE LAND USE PERMIT TO MAMMOTH SPRINGS LLC FOR SITE DEVELOPMENT ACTIVITIES NECESSARY TO CONSTRUCT RESIDENTIAL AND RETAIL BUILDINGS AND ASSOCIATED INFRASTRUCTURE AND APPROVE BUGLINE TRAIL RELOCATION AGREEMENT

Presented by: Land Use, Parks and Environment Committee

Approved by: Finance Committee

James A. Heinrich
James A. Heinrich, Chair

Patricia A. Haukohl
Patricia A. Haukohl, Chair

Jim Batzko
Jim Batzko

Daniel J. Draeger
Daniel J. Draeger

Walter L. Kolb
Walter L. Kolb

Pamela Meyer
Pamela Meyer

Pamela Meyer
Pamela Meyer

Richard Morris
Richard Morris

Fritz Ruf
Fritz Ruf

Larry Nelson
Larry Nelson

Thomas J. Schellinger
Thomas J. Schellinger

absent
Cathleen A. Slattery

Peter M. Wolff
Peter M. Wolff

William J. Zaborowski
William J. Zaborowski

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 5/28/13, Kathleen Novack
Kathleen Novack, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: ✓
Vetoed: _____

Daniel P. Vrakas

Date: 6-3-13, _____
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-05/28/13

(ORD) NUMBER-1680014

- | | | | |
|----|-----------------------|----|-----------------------|
| 1 | C. SLATTERY.....AYE | 2 | D. FALSTAD.....AYE |
| 3 | R. MORRIS..... | 4 | J. BATZKO.....AYE |
| 5 | J. BRANDTJEN.....AYE | 6 | J. JESKEWITZ..... |
| 7 | J. GRANT.....AYE | 8 | P. HAUKOHL.....AYE |
| 9 | J. HEINRICH.....AYE | 10 | D. SWAN.....AYE |
| 11 | F. RUF.....AYE | 12 | P. WOLFF.....AYE |
| 13 | P. DECKER.....AYE | 14 | P. MEYER.....AYE |
| 15 | W. KOLB.....AYE | 16 | M. CROWLEY.....AYE |
| 17 | D. PAULSON.....AYE | 18 | L. NELSON.....AYE |
| 19 | C. CUMMINGS.....AYE | 20 | T. SCHELLINGER....AYE |
| 21 | W. ZABOROWSKI.....AYE | 22 | P. JASKE.....AYE |
| 23 | K. HAMMITT.....AYE | 24 | D. DRAEGER.....AYE |
| 25 | G. YERKE.....AYE | | |

TOTAL AYES-23

TOTAL NAYS-00

CARRIED X

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-23

Document Number	Document Name
-----------------	---------------

This LAND USE PERMIT, made between WAUKESHA COUNTY

Grantor,
and Mammoth Springs LLC,
Grantee.

PROPERTY DESCRIPTION:

See attached Exhibit A, Exhibit B and Exhibit C.

CONDITIONS IMPOSED:

FOR AND IN CONSIDERATION of the covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, WAUKESHA COUNTY, WISCONSIN, a Municipal Corporation and Owner, does hereby permit Mammoth Springs LLC ("Grantee"), its successors and assigns, the right, permission, and authority to conduct site development activities necessary to construct residential and retail buildings and associated infrastructure across portions of those lands known as the Bugline Trail Corridor, located in the Northwest corner of Section 26, Township 8 North, Range 19 East, Waukesha County, State of Wisconsin more particularly identified herein (hereinafter "Bugline Trail Section"). The site development work shall be in accordance with that which is depicted on the attached plan (Exhibit B). Grantee shall act in accordance with all applicable Federal, State and Local codes, in addition to all requirements hereof, and obtain all necessary permits to complete the work contemplated hereby.

Name and Return Address:
Waukesha County Parks and Land Use
515 W. Moreland Blvd., Room AC230
Waukesha, WI 53188
Attn: Duane Grimm

Tax Key: SUXV0245962

The location of the Land Use Permit with respect to the Bugline Trail Section upon the premises of Waukesha County is more particularly described in Exhibit A and shown on the plan attached hereto as Exhibit B, both of which are incorporated by reference and made a part hereof.

Grantee, its successors and assigns, will defend, indemnify and hold harmless Waukesha County (the "County") and all of its departments, agencies, boards, officers, employees and agents from any and all liability, loss, damages, expenses and costs, including attorneys fees and expenses, that they may suffer or incur as the result of any injury (including death) or damage to person or property which results from any action or omission, negligent or otherwise, of Grantee, its successors, assigns, agents, invitees and guests, in connection with the grant of this Land Use Permit, any and all work of any type which Grantee, its successors and assigns, and any of its agents, invitees and/or guests perform or should perform upon the lands subject to this Land Use Permit, and its use of the County lands covered by this Land Use Permit.

The right, permission and authority is given to Grantee, its successors and assigns, to remove pavement, stone and base materials that constitute the Bugline Trail Section upon the condition that these activities may commence only upon approval of the County of Waukesha by the Waukesha County Department of Parks and Land Use of the location, construction plans, and subsequent written approval for the alternate Bugline Trail through adjacent property owned by Grantee and the Village of Sussex, as depicted on Exhibit B (the "Alternate Bugline Trail"). The Alternate Bugline Trail shall be constructed on land suitable for trail construction outside of known floodplain areas in accordance with Wisconsin Department of Transportation Bicycle Facilities Design Handbook and Americans with Disabilities Act standards. Completion of vegetative restoration in trail shoulder areas, extending a minimum of six feet from the edge of the trail pavement, on both sides of the trail, is a condition of this permit and subject to written approval of the County of Waukesha by the Waukesha County Department of Parks and Land Use. Approved completed construction of the Alternate Bugline Trail no later than December 30, 2013 will be consideration for elimination of the Bugline Trail on property owned by Waukesha County.

Grantee and its successors, assigns and agents agree that the Bugline Trail shall remain open for public use during construction, maintenance, or related activities described in the Land Use Permit. Grantee shall temporarily relocate the Bugline Trail Section until the Alternate Bugline Trail is completed and accepted by Waukesha County. The Bugline Trail detour, as depicted on the attached plan as Exhibit C (the "Bugline Trail Detour"), shall be established after receipt of approval of the construction detour plans by the County of Waukesha by the Waukesha County Department of Parks and Land Use and with the approval and consent of the Village of Sussex. The establishment of the Bugline Trail Detour shall include appropriate signage prior to any use of

the Bugline Trail Section by Grantee pursuant to this permit and shall remain open at all times until the Alternate Bugline Trail has been constructed and ownership transferred to the County as set forth below.

Ownership of the land on which the Alternate Bugline Trail is constructed shall be transferred by deed to Waukesha County under a land transaction contract separate from this agreement by December 31, 2015. Should the Alternate Bugline Trail not be constructed per Exhibit B or the land transaction not be finalized by December 31, 2015, then this Land Use Permit is rendered null and void and the Bugline Trail Section must be restored on the lands subject to this Land Use Permit to original conditions or better, subject to written acceptance of the County of Waukesha by the Waukesha County Department of Parks and Land Use. Grantee and its successors and assigns shall install and maintain appropriate warning and traffic signage along the Alternate Bugline Trail, subject to the written approval of the County of Waukesha by the Waukesha County Department of Parks and Land Use. The signage shall regulate vehicle and pedestrian traffic through all site ingress and egress areas, and shall inform Bugline Trail users of upcoming intersections, while maintaining unimpeded traffic flow on the Bugline Trail.

Grantee and its successors and assigns shall be responsible for the identification of all easements attached to the lands subject to this Land Use Permit, including the location and removal, relocation or alteration, if necessary, of all underground and overhead utilities.

This Land Use Permit shall run with the land, and may not be revoked except for cause upon written notice by Waukesha County. "Cause" hereunder shall mean the uncured breach of any term of this Land Use Permit or any conduct by Grantee or Grantee's successors in interest blocking or otherwise interfering with the public's use of the Bugline Trail which continues to exist thirty (30) or more days after receipt of written notice of the breach or interference. Notwithstanding the foregoing, if at any time Grantee becomes the fee owner of the Bugline Trail Section, this Land Use Permit shall automatically terminate and be of no further force or effect.

The Grantee and its successors and assigns shall, at all times during the term of this Land Use Permit, keep in force and effect insurance policies, issued by a company or companies authorized to do business in the state of Wisconsin and satisfactory to the Grantor. Such insurance shall be primary. Upon execution of this Land Use Permit, Grantee shall furnish the Grantor with a Certificate of Insurance which references this Land Use Permit. The County shall be given thirty (30) days' advance notice of cancellation, nonrenewal, or material reduction of coverages, scope or limits during the term of this Land Use Permit. Grantee and its contractors shall maintain the following insurance coverage:

- (a) Worker's Compensation and Employer's Liability Insurance - Statutory worker's compensation benefits and employers' liability insurance with a limit of liability not less than \$500,000 each accident. A waiver of subrogation endorsement in favor of the Property Owner shall be included.
- (b) Commercial General Liability Insurance — Policy shall be written to provide coverage for, but not limited to, the following: personal injury, premises and operations, blanket contractual coverage, broad form property damage, and independent contractors' coverage. Limits of liability shall be not less than \$1,000,000 each occurrence, \$1,000,000 personal injury, and \$1,000,000 general aggregate.
- (c) Business automobile policy covering all owned, hired, and non-owned private passenger autos and commercial vehicles. Limit of liability not less than \$1,000,000 combined single limit.
- (d) Pollution Liability Insurance – Policy shall provide pollution liability/environmental impairment coverage for sudden and non-sudden occurrences causing injuries/damages (including environmental restoration) arising out of the negligent acts, errors or omissions of the insured party. Limits of liability not less than \$1,000,000 each occurrence/claim, \$1,000,000 aggregate.
- (e) It is understood that the specified coverage in no way limits the liability of Grantee, its employees, agents, contractors, and subcontractors.

The County, its boards, commission, agencies, officers, employees and representatives shall be named as additional insured and so stated on the Certificates of Insurance for Grantee's insurance coverage, as well as, its contractors.

All notices to the Grantor shall be sent by certified U.S. Mail, Return Receipt Requested, addressed to the Park System Manager, Waukesha County Department of Parks and Land Use, Park System Division, 515 W. Moreland Blvd, Room AC230, Waukesha, Wisconsin 53188. All notices to Grantee shall be sent by certified U.S. Mail, Return Receipt Requested, addressed to Mammoth Springs LLC, 4375 Pilgrim Hollow Court, Brookfield, Wisconsin 53005, or Grantee's successor in interest.

This Land Use Permit shall be binding upon and inure to the benefits of the successors and assigns of all parties hereto.

IN WITNESS WHEREOF, the said COUNTY OF WAUKESHA has caused these presents to be signed by the Director of Parks and Land Use on this _____ day of _____, 2013.

COUNTY OF WAUKESHA

By: _____
Dale R. Shaver, Director
Waukesha County Department of Parks
and Land Use

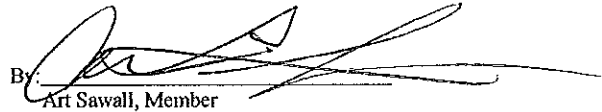
STATE OF WISCONSIN)
)SS
WAUKESHA COUNTY)

Personally came before me this _____ day of _____, 2013, the above-named, Dale R. Shaver, Director of Waukesha County Department of Parks and Land Use, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My commission: _____

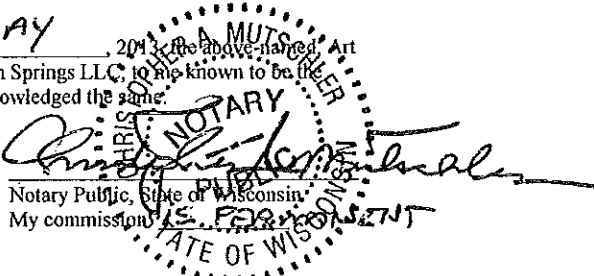
This Land Use Permit is accepted by Mammoth Springs LLC by signature of their authorized representative this 6TH day of MAY, 2013.

Mammoth Springs LLC

By: 
Art Sawall, Member

STATE OF WISCONSIN)
)SS
WAUKESHA COUNTY)

Personally came before me this 6TH day of MAY, 2013, the above-named Art Sawall, Authorized Signatory and Member of Mammoth Springs LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.


Notary Public, State of Wisconsin
My commission: 15 FEBRUARY 2012

This instrument was drafted by Erik G. Weidig.

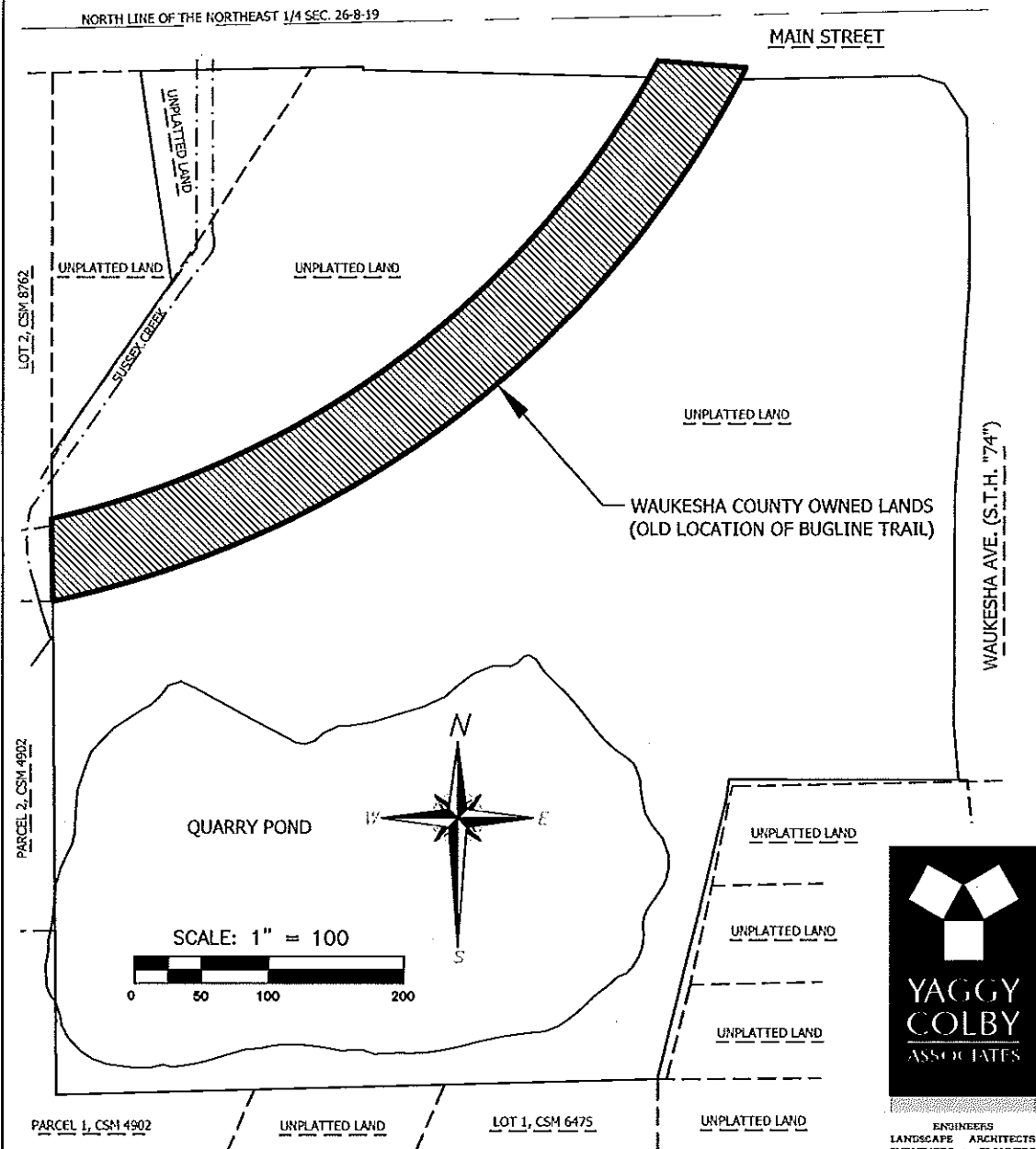
EXHIBIT "A"

BEING A PART OF THE NW. 1/4 OF THE NE. 1/4 OF SECTION 26, T.8N., R.19E.,
VILLAGE OF SUSSEX, WAUKESHA COUNTY, WI

LAND USE LEGAL DESCRIPTION:

Being all that part of the Northwest 1/4 of the Northeast 1/4 of Section 26, Township 8 North, Range 19 East, Village of Sussex, Waukesha County, Wisconsin, more particularly described as follows:

Commencing at the North 1/4 corner; thence N88°52'03"E, along the North line of the Northeast 1/4 of said Section 26, a distance of 1,027.62 feet; thence S01°07'57"E, a distance of 33.01 feet to the point of beginning of the hereinafter described lands; thence S85°25'25"E, 65.20 feet; thence 672.66 feet along the arc of a curve to the right, with a radius of 746.20 feet and whose chord bears S52°25'53"W, 650.12 feet; thence N01°08'56"W, 61.13 feet; thence 582.87 feet along the arc of a curve to the left, with a radius of 686.20 feet and whose chord bears N52°58'58"E, a distance of 565.51 feet to the point of beginning. Said lands contain 37,668 Sq.Ft. Or 0.86 Acres.



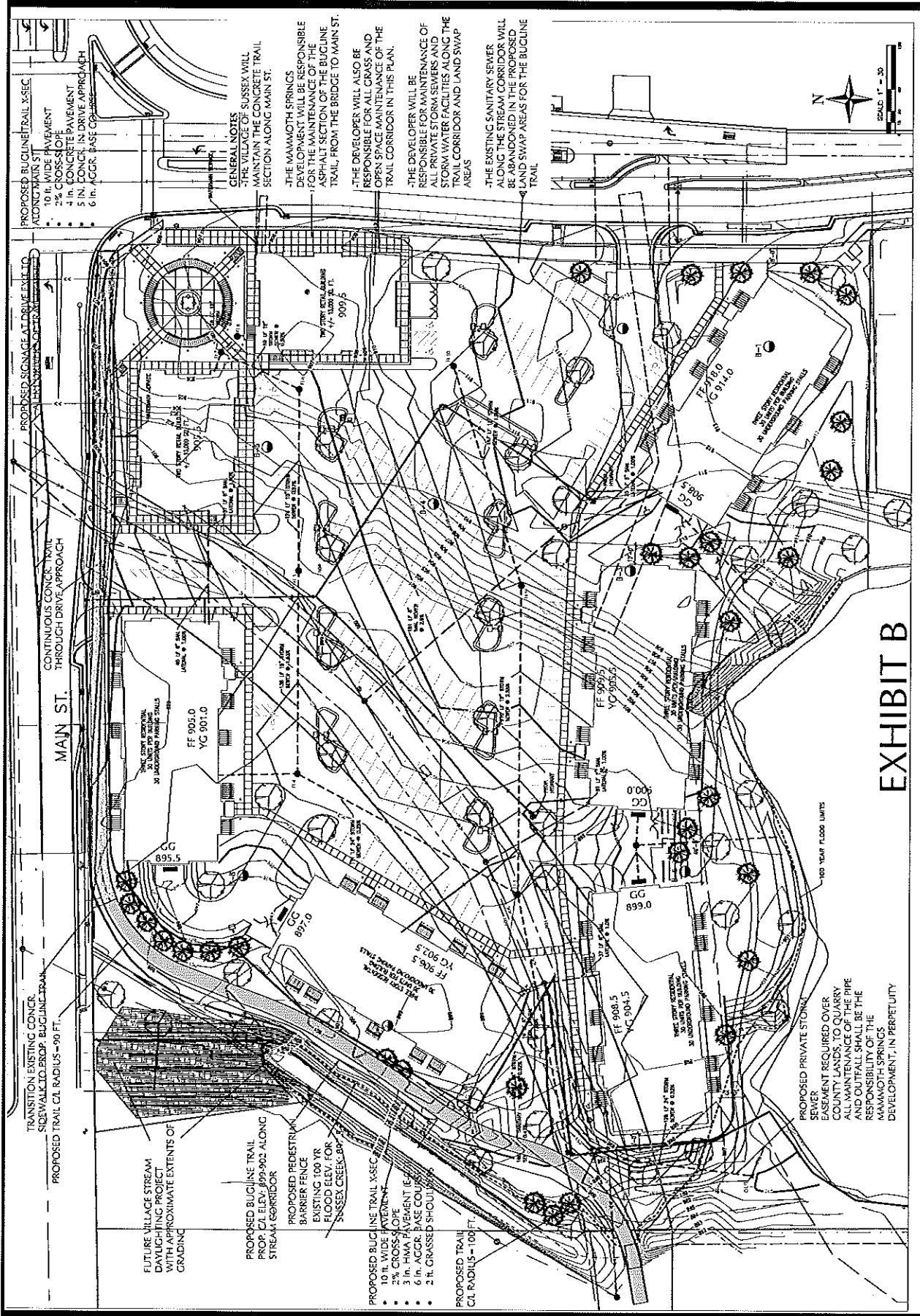
ENGINEERS
LANDSCAPE ARCHITECTS
SURVEYORS • PLANNERS
301 WAFFE AVENUE
DELAWARE, WISCONSIN 53118
763-215-2855
FAX 763-245-2254
EMAIL: INFO@YAGGY.COM

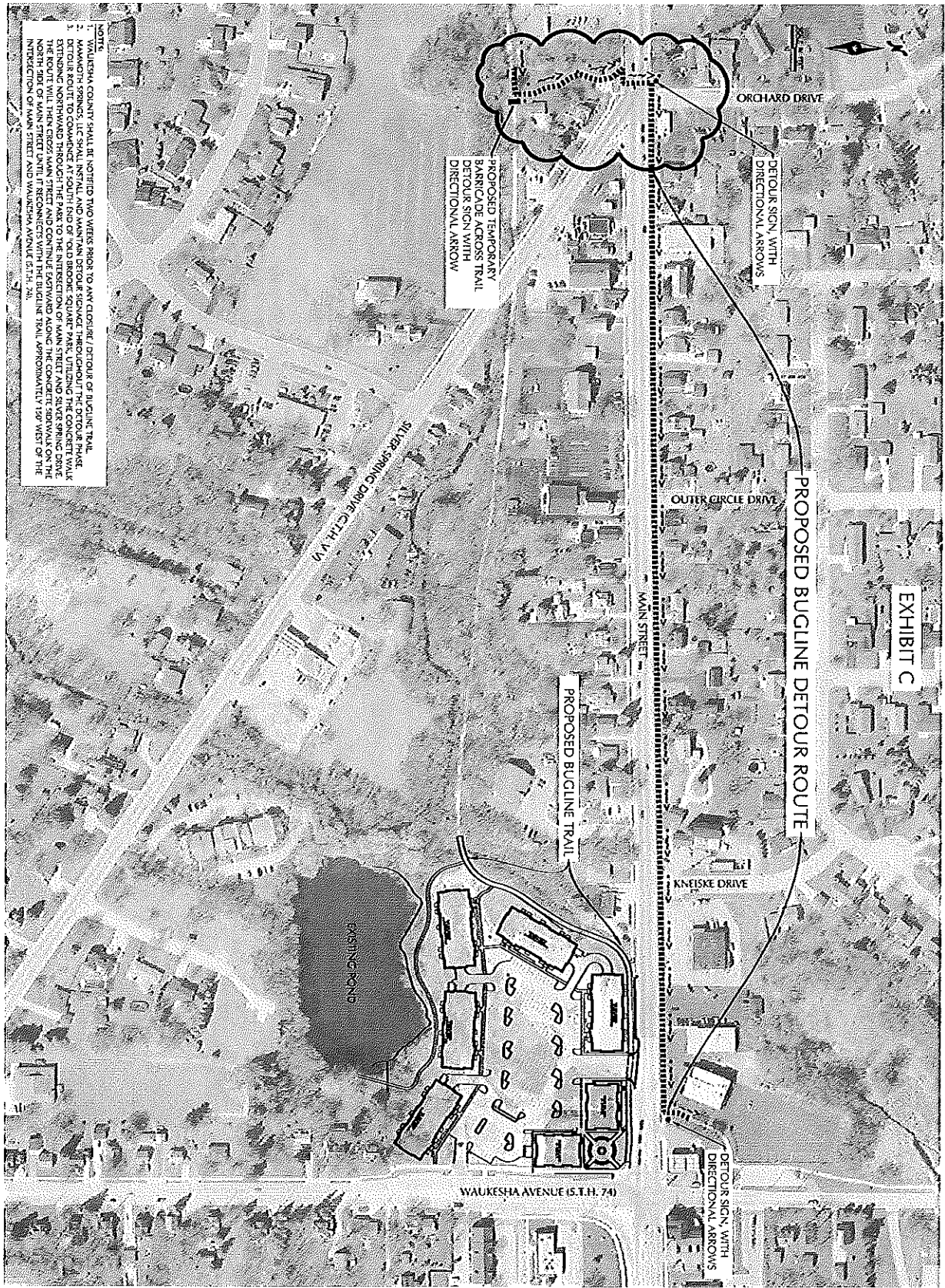
PROJECT 15878

168-0-014

6.

PROJECT NO.	15075
DATE	07-11-2013
DESIGNED BY	RP
CHECKED BY	ML
DATE OF THIS SET	07-18-2013
DATE OF PREVIOUS SET	07-22-2013
DATE OF NEXT SET	07-29-2013
SCALE	AS SHOWN

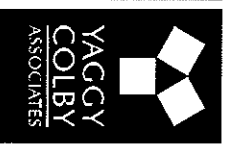




- NOTES:**
1. WAUKESHA COUNTY SHALL BE NOTIFIED TWO WEEKS PRIOR TO ANY CLOSED / DETOUR OF BUGLINE TRAIL.
 2. MAMMOTH SPRINGS, LLC SHALL INSTALL AND MAINTAIN DETOUR SIGNAGE THROUGHOUT THE DETOUR PHASE EXTENDING SOUTH TO COMMENCE AT SOUTH END OF OLD BROOK SQUARE PARK, UTILIZING THE CONCRET WALK NORTH SIDE OF MAIN STREET UNTIL IT RECONNECTS WITH THE DETOUR TRAIL, APPROXIMATELY 150 WEST OF THE INTERSECTION OF MAIN STREET AND WAUKESHA AVENUE (S.T.H. 74).

NO. 1	DATE	APRIL 2013
NO. 2	DATE	
NO. 3	DATE	
NO. 4	DATE	
NO. 5	DATE	
NO. 6	DATE	
NO. 7	DATE	
NO. 8	DATE	
NO. 9	DATE	
NO. 10	DATE	

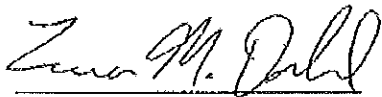
MAMMOTH SPRINGS
VILLAGE OF SUSSEX, WI
BUGLINE TRAIL CONSTRUCTION DETOUR - EXHIBIT C
168-0-014



FISCAL NOTE

APPROVE LAND USE PERMIT TO MAMMOTH SPRINGS LLC FOR SITE
DEVELOPMENT ACTIVITIES NECESSARY TO CONSTRUCT RESIDENTIAL
AND RETAIL BUILDINGS AND ASSOCIATED INFRASTRUCTURE AND
APPROVE BUGLINE TRAIL RELOCATION AGREEMENT

This ordinance authorizes the Parks and Land Use Department to issue a land use permit and to enter into the appropriate agreements to relocate a portion of the Bugline Trail through property owned by Mammoth Springs LLC and the Village of Sussex. The construction of the alternate trail will be the responsibility of Mammoth Springs and there will be no fiscal or schedule impact to the County Capital Project #200014 – Bikeway Pavement Improvements. Ongoing maintenance of this section of the trail will be shared by Mammoth Springs and the Village of Sussex, so there will be no impact to the Department's operating budget.



Lawrence M. Dahl
Accounting Services Manager

LMD
5/7/2013