

Office of the City Attorney

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Legal Assistant

July 9, 2025

Memorandum

To: Waukesha Water Utility Commission
From: Brian Running
Re: Arrowhead Trail Project Condemnation Proceedings

As you are aware, the Water Utility is undertaking a project to install a main to create a loop between Arrowhead Trail and White Oak Way, in the northwest part of the City. Easements are needed from private landowners in order to install the main, and the Utility has secured easements from all affected landowners, except one.

That one landowner, the Secular Institute of the Schoenstatt Sisters of Mary, Inc., has indicated that they will not voluntarily grant an easement across their property, and there are no alternative routes that would eliminate the need for an easement from them. Therefore, a taking by eminent domain is necessary.

The taking will be an easement, not outright fee ownership of the land. The land on which the easement will be located is a 30-foot by 40-foot rectangle in the extreme northeast corner of the property. A survey map and other location information is attached for your reference. A draft of the easement itself is also attached.

Eminent domain is strictly controlled by state statutes, to balance the needs of utilities to install facilities with the private property rights of landowners. The statutory process must be rigidly followed.

One of the earliest steps in the process is for the governing body (in this case, the Common Council) to pass a relocation order and a determination of necessity, which provides that the Common Council is satisfied that both the project and the taking are necessary to complete a public project, and to give public notice that an eminent domain proceedings is underway. A copy of the "Resolution Determining Necessity and Adopting Relocation Order for Water Utility Easement Eminent Domain Proceedings" is attached for your review.

In order for the Common Council to approve the Resolution, the Water Utility Commission must approve it and recommend its passage to the Common Council. Therefore, the Commission requested to review this Resolution and recommend its passage if the Commission finds it in order. A recommended motion is "Move to approve the Resolution Determining Necessity and Adopting Relocation Order for Water Utility Easement Eminent Domain Proceedings" for the Arrowhead Trail project and recommend its passage by the Common Council."

After passage of the Resolution, the next steps in the process are to obtain an appraisal to determine the amount the Utility must offer for the easement, negotiation with the owner to see if a mutual agreement can be reached and avoid the rest of the eminent domain process, the making of a formal “jurisdictional offer” if no mutual agreement can be reached, and finally an “Award of Damages,” which serves as the conveyance of the easement to the City. There are other intermediate steps, but that is the essential process.

Please let me know if you have any questions about this. Thank you for your consideration.

**Common Council
of the
City of Waukesha, Wisconsin
Resolution 2025 – _____**

**Resolution Determining Necessity and Adopting Relocation
Order for Water Utility Easement Eminent Domain Proceedings**

Whereas the Waukesha Water Utility has determined that a water main must be installed between Arrowhead Trail and White Oak Way to create a water-main loop and eliminate water-main dead-ends in which water does not circulate and water quality may deteriorate; and

Whereas the installation of the water main requires the acquisition of easements from private-property owners; and

Whereas it is necessary to acquire one such easement across a certain parcel of land by eminent domain proceedings;

Now therefore, the City of Waukesha Common Council resolves as follows:

1. This Resolution is a relocation order pursuant to Wis. Stat. §32.05(2) for the purpose of laying out and improving water transmission and distribution facilities, that being the installation of the water-main loop public improvement project described herein.
2. This Resolution is also a determination of necessity pursuant to Wis. Stat. §32.07(2), and the Common Council hereby determines that it is necessary and a public purpose to install a water main between Arrowhead Trail and White Oak Way to create a loop to maintain the quality of water provided by the City to its residents; and that the acquisition of an easement for that purpose across the lands described herein is necessary for the completion of that work.
3. The land on which the easement must be acquired and in which the water main will be installed is a portion of the parcel known as tax key WAKC 0986 999 002, and is shown and legally-described on the attached Exhibit A.
4. The City of Waukesha will acquire a perpetual, exclusive easement in the land described in Exhibit A from the present owners.
5. The City Attorney is authorized and directed to commence and prosecute eminent domain proceedings to acquire the necessary easement across the land described in Exhibit A.

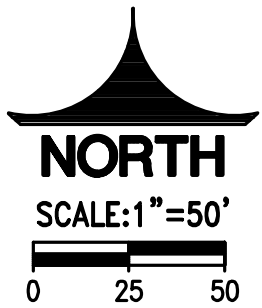
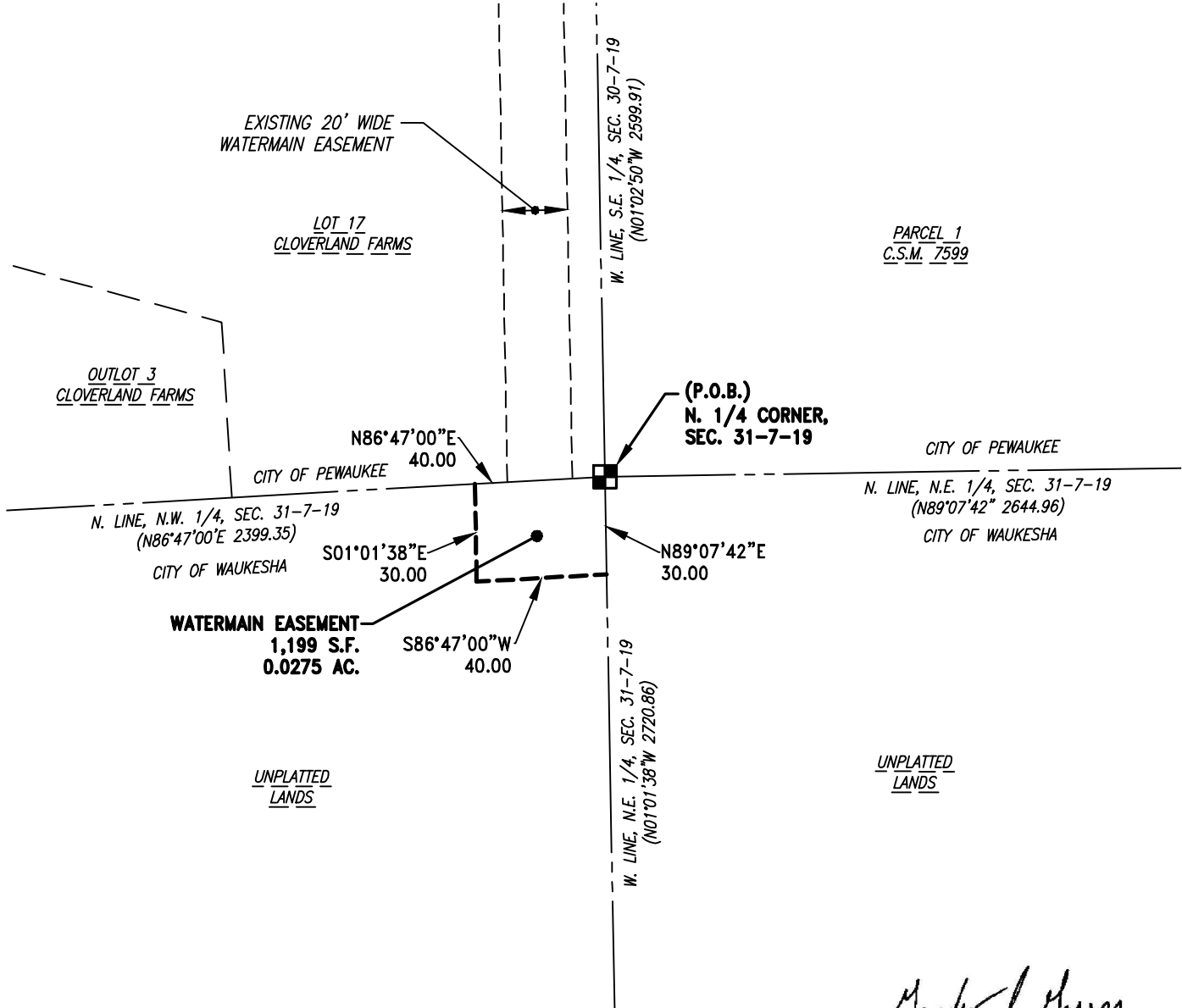
Passed and adopted the ____ day of _____, 2025.

Shawn N. Reilly, Mayor

Katie Panella, City Clerk

EXHIBIT "B"

CITY OF WAUKESHA WATERMAIN EASEMENT



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4100 N. Calhoun Road
Suite 300
Brookfield, WI 53005
Phone: (262) 790-1480
Fax: (262) 790-1481

THIS EXHIBIT WAS PREPARED BY GRADY L. GOSSER, P.L.S. (S-2972)

SHEET: 1 OF 2
2/17/25

EXHIBIT "B" CONTINUED

CITY OF WAUKESHA WATERMAIN EASEMENT

LEGAL DESCRIPTION:

Being a part of Unplatted lands, being located in a part of the Northeast 1/4 of the Northwest 1/4 of Section 31, Town 7 North, Range 19 East, In the City of Waukesha, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

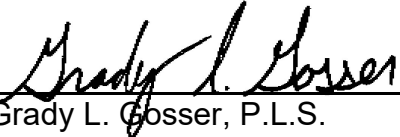
Commencing at the North 1/4 Corner of said Section 31; said point being the place of beginning of lands hereinafter described:

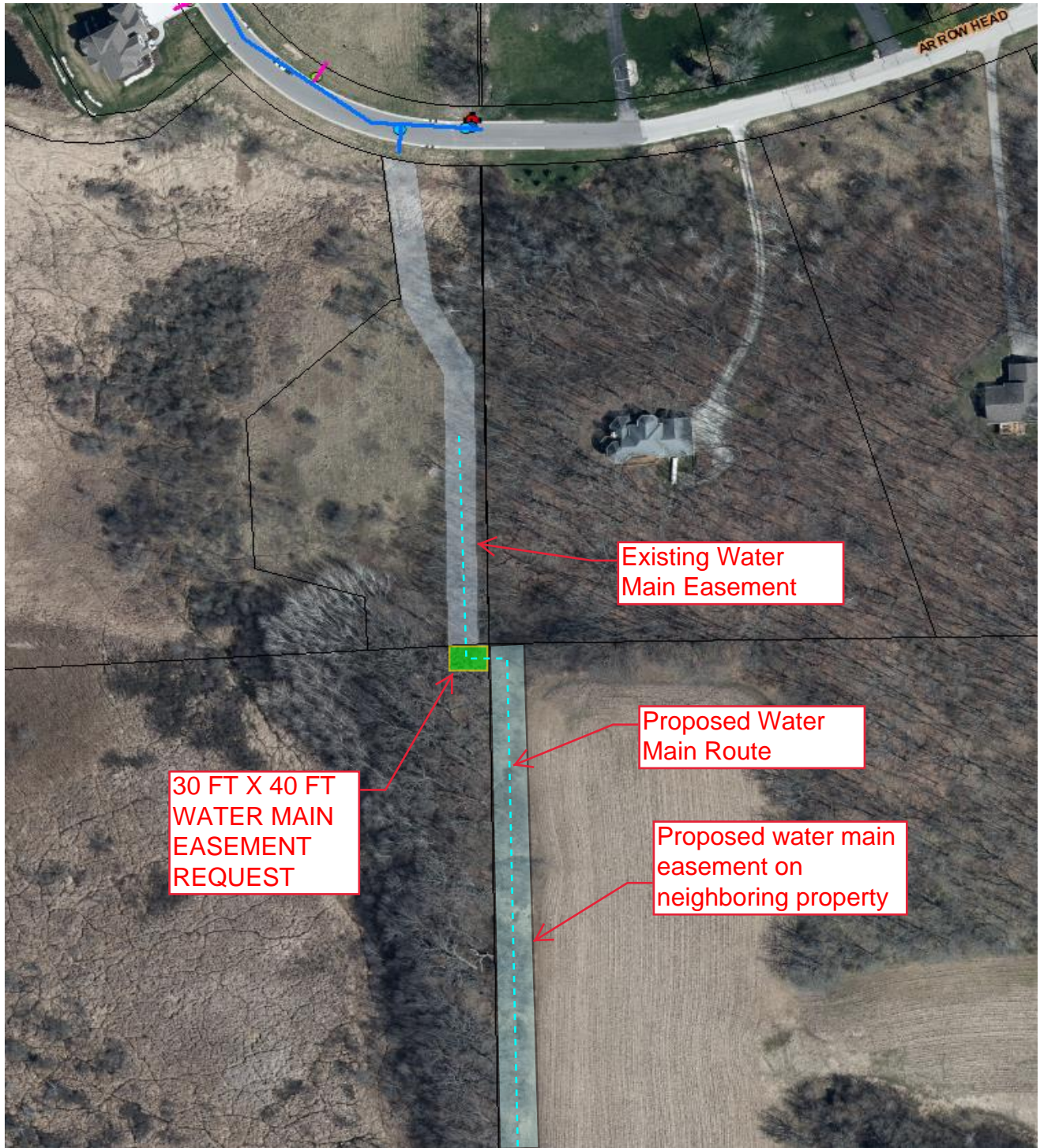
Thence South 01°01'38" East and along the East line of the said Northeast 1/4 Section, 30.00 feet to a point; Thence South 86°47'00" West, 40.00 feet to a point; Thence North 01°01'38" West, 30.00 feet to a point on the North line of the said Northwest 1/4 Section; Thence North 86°47'00" East and along the said North line, 40.00 feet to the point of beginning of this description.

Said Parcel contains 1,199 Square Feet (or 0.0275 Acres) of land, more or less.

Date: 2/17/25




Grady L. Gosser, P.L.S.
Professional Land Surveyor S-2972
TRIO ENGINEERING, LLC
4100 N. Calhoun Road, Suite 300
Brookfield, WI 53045
Phone: (262)790-1480



ARROW HEAD

Existing Water Main Easement

Proposed Water Main Route

30 FT X 40 FT WATER MAIN EASEMENT REQUEST

Proposed water main easement on neighboring property



Schoenstatt
Sisters of Mary
Campus

Proposed Easement
Location

UTILITY EASEMENT

Parcel ID Number: WAKC 0986 999 002

After recording return to:

Kelly Zylstra
City of Waukesha Water Utility
201 Delafield St
Waukesha WI 53188

The Grantor, **Secular Institute of the Schoenstatt Sisters of Mary, Inc.**, for a good and valuable consideration, hereby conveys to the Grantee, the **City of Waukesha**, a perpetual, exclusive Easement across and upon the following-described Subject Parcel in Waukesha County, Wisconsin, subject to all of the terms stated below:

Subject Parcel:

The West One-half (1/2) of the Northwest One-quarter (1/4) of Section Thirty-one (31), Township Seven (7) North, Range Nineteen (19) East, in the City of Waukesha, County of Waukesha, State of Wisconsin; and

The Northeast One-quarter (1/4) of the Northwest One-quarter (1/4) of Section Thirty-one (31), Township Seven (7) North, Range Nineteen (19) East, in the City of Waukesha, County of Waukesha, State of Wisconsin.

Excepting from the above Certified Survey Map No. 7924.

Easement Area:

Being a part of unplatted lands, located in a part of the Northeast 1/4 of the Northwest 1/4 of Section 31, Town 7 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin, more particularly described as follows:

Commencing at the North 1/4 corner of said Section 31; said point being the point of beginning of lands hereinafter described;

Thence South 01°01'38" East and along the East line of the said Northeast 1/4 section, 30.00 feet to a point; thence South 86°47'00" West, 40.00 feet to a point; thence North 01°01'38" West, 30.00 feet to a point on the North line of the said Northwest 1/4 section; thence North 86°47'00" East and along the said North line, 40.00 feet to the point of beginning.

Said parcel contains 1,199 square feet, or 0.0275 acres of and, more or less.

1. **Grant of Easement.** The Grantor grants to the Grantee a perpetual Easement and right-of-way over, upon and beneath the surface of the Easement Area to construct, use, operate, inspect, maintain, repair, improve, supplement, reconstruct, and remove water main pipes, related facilities and fixtures, related infrastructure, equipment, accessories, and appurtenances that may from time to time be required in Grantee's sole judgment, and for ingress and egress at any time in order to exercise the rights and privileges granted herein. The Easement is exclusive and Grantor shall not allow any third party to install any improvements or facilities over, under, in, upon, or across the Easement Area. During times at which the described activities are being done, Grantee and Grantee's contractors may also place equipment and materials within the Easement Area as reasonably required to conduct such activities.
2. **Restrictions within Easement Area.** Grantor, and any persons or entities under contract with Grantor or subject to Grantor's direction or control, shall not do any of the following within the Easement Area without the expressed, written, prior approval of the Grantee:
 - a. Place or construct any buildings, fences, or structures that require footings, pilings, piers, or foundations in the Easement Area.
 - b. Change grade elevations.

- c. Excavate.
 - d. Dump fill, dirt, or any other materials.
 - e. Plant trees or bushes that would reasonably be expected to grow to more than four feet in height.
 - f. Drive posts, drive stakes longer than 12 inches, drive pilings, drive helical footings, or bore holes of any size.
 - g. Place pavement, curbs or sidewalks, except as specifically approved in writing by the Grantee.
 - h. Place any items or do any acts which reasonably should be expected to interfere with Grantee's rights granted in section 1.
3. **Removal of Items from Easement Area.** In order to perform any activities authorized in section 1, Grantee may remove any items from the Easement Area that are in violation of the restrictions in section 2, and Grantee shall not be liable for damage to such items resulting from removal. However, Grantee shall provide advance notice of work to be performed in the Easement Area, and shall cooperate with Grantor to minimize damage to any items to be removed from the Easement Area.
4. **Consistent Uses Allowed.** The Grantor reserves the right to use the Easement Area for all uses and purposes that are not prohibited by this instrument and will not interfere with the rights granted to Grantee by this instrument.
5. **Restoration.** Grantee shall restore the surface of the Easement Area and the Subject Parcel that are disturbed by any of Grantee's acts permitted under section 1, as nearly as reasonably possible to their condition before the disturbance. The Grantee shall not be required to replace pavement, trees, bushes, or any items that are prohibited within the Easement Area by this instrument.
6. **Covenants Run with Land.** All of the terms and conditions of this instrument shall run with the land and shall be binding upon and inure to the benefit of all of Grantor's and Grantee's successors in interest.
7. **No Waiver by Non-Use.** Neither non-use nor limited use of the rights granted by this instrument shall constitute a waiver or partial waiver of later exercise and enforcement of such rights.
8. **Governing Law.** This instrument shall be construed and enforced in accordance with the laws of the State of Wisconsin.
9. **Entire Agreement.** This instrument sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this instrument and recorded in the office of the Register of Deeds of Waukesha County, Wisconsin.
10. **Severability.** If any term or condition of this instrument is deemed invalid or unenforceable by a court of competent jurisdiction, such invalid or unenforceable provision shall be severed and the remainder shall remain fully enforceable.
11. **Waiver.** Waivers of the right to exercise any right granted by this instrument shall not be deemed, inferred or construed by the acts or inactions of the parties, and shall only be effective if expressly stated, in writing, by the waiving party.
12. **Costs of Enforcement.** If a lawsuit is commenced to enforce this instrument, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees.

Conveyance made this _____ day of _____, 2025.

Grantor: Secular Institute of the Schoenstatt Sisters of Mary, Inc.

By:(print name)_____
Title:_____

By:(print name)_____
Title:_____

State of Wisconsin }
 } ss.
Waukesha County }

_____ and _____ personally came before me this _____
day of _____, 2025, and are known to me to be the persons who executed this instrument in the indi-
cated capacities and acknowledged the same.

_____, Notary Public,
Waukesha County, Wisconsin
My commission (is permanent)(expires_____)

Grantee: City of Waukesha

By Shawn N. Reilly, Mayor

Attest: Katie Panella, City Clerk

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Katie L. Panella personally came before me this _____ day of _____,
2025, and are known to me to be the persons who executed this instrument in the indicated capacities and acknowledged the same.

_____, Notary Public,
Waukesha County, Wisconsin
My commission (is permanent)(expires_____)

This instrument was drafted by Brian E. Running, City Attorney.