

Stormwater Management Facilities Use and Maintenance Agreement With Restrictive Covenants

Parcel ID Numbers: WAKC 1343 299
 WAKC 1343 300
 WAKC 1343 301
 WAKC 1343 302
 WAKC 1343 303
 WAKC 1343 304
 WAKC 1343 307

After recording return to:
City of Waukesha Engineering Department
130 Delafield St
Waukesha WI 53188

Legal descriptions of real property subject to this Agreement, which together are referred to herein as the Property:

Parcel A

Lot 1 of Certified Survey Map No. 10535, recorded in Volume 100 of Certified Survey Maps beginning on page 341 as Document No. 3638601. Tax Key WAKC 1343 299. Present Owner: Waukesha State Bank.

Parcel B

Lot 2 of Certified Survey Map No. 10535, recorded at Volume 100 of Certified Survey Maps beginning on page 341 as Document No. 3638601. Tax Key WAKC 1343 300. Present Owner: Convenience Store Investments, a Wisconsin limited partnership.

Parcel C

Lot 1 of Certified Survey Map No. 10537, recorded at Volume 101 of Certified Survey Maps on Pages 1 to 4 as Document No. 3564927. Tax Key WAKC 1343 301. Present Owner: PR Waukesha, LLC.

Parcel D

Outlot 1 of Certified Survey Map No. 10537, recorded at Volume 101 of Certified Survey Maps on Pages 1 to 4 as Document No. 3564927. Tax Key WAKC 1343 303. Present Owner: PR Waukesha, LLC.

Parcel E

Lot 2 of Certified Survey Map No. 10537, recorded at Volume 101 of Certified Survey Maps on Pages 1 to 4 as Document No. 3564927. Tax Key WAKC 1343 302. Present Owner: Mad Dog Properties LLC.

Parcel F

Outlot 2 of Certified Survey Map No. 10537, recorded at Volume 101 of Certified Survey Maps on Pages 1 to 4 as Document No. 3564927. Tax Key WAKC 1343 304. Present Owner: Mad Dog Properties LLC.

Parcel G

Lot 2 of Certified Survey Map No. 10608, recorded at Volume 102 of Certified Survey Maps beginning on Page 25 as Document No. 4292539. Tax Key WAKC 1343 307. Present Owner: Mad Dog Properties LLC.

Stormwater Management Facilities Use and Maintenance Agreement

This Stormwater Management Facility Use and Maintenance Agreement, referred to herein as the Agreement, is entered into by and among **Waukesha State Bank; Convenience Store Investments**, a Wisconsin limited partnership; **PR Waukesha, LLC**; and **Mad Dog Properties LLC**; together referred to herein as the Owners.

Recitals

The Owners are the owners of Parcels A through G in the Property, as indicated above, which are located adjacent to one another along Fleetfoot Drive in Waukesha.

When the Property was first developed, a storm water retention pond and associated facilities were required to be located on Parcel D, for the drainage of all of Parcels A through G.

A Storm Water Management Practice Maintenance Agreement was recorded against Parcels A through F of the Property on October 23, 2008, with the intent of assigning responsibility for maintenance of the retention pond and facilities, but which did not provide for sharing of maintenance costs among all parcels draining to the pond.

A proposal has been made for development on Parcels E, F, and G, which will result in the recording of a CSM combining Parcels E, F & G into one lot. Parcel G was not subject to the already-recorded Storm Water Management Practice Maintenance Agreement, but the storm water retention pond and associated facilities were designed to include the post-construction flow from Parcel G.

The Owners now wish to clarify their rights and shared responsibilities with respect to the retention pond and facilities, to formally include Parcel G and its owners, and to supersede the provisions of the already-recorded Storm Water Management Practice Maintenance Agreement.

Now, therefore, the Owners agree and contract as follows, intending to bind themselves and all of their successors and assigns:

- 1. Agreement Runs with the Land.** This Agreement shall be recorded with the Register of Deeds for Waukesha County against all of Parcels A through G, and its terms and conditions shall run with the land, regardless of any future subdivisions or mergers of any of the Parcels, and shall be binding upon all of the Owners and their successors and assigns. Whenever the term Owner is used in this Agreement, it includes the parties to this Agreement and all of their successors and assigns.
- 2. Earlier Agreement Is Superseded.** The Storm Water Management Practice Maintenance Agreement recorded October 23, 2008, by the Register of Deeds for Waukesha County as document no. 3605974, is voided and superseded entirely by this Agreement.
- 3. Parcels C and D May Not Be Conveyed Separately.** Neither Parcel C nor Parcel D may be conveyed separately without the other, and Parcels C and D shall at all times have common ownership. Any attempt to convey either Parcel C or D separately without the other shall be void.
- 4. Right to Use Stormwater Facilities.** All of the Parcels in the Property shall have the right to drain stormwater to the stormwater management facilities on Parcel D, and the Owners shall have a perpetual easement on and across Parcel D for the drainage of stormwater from their respective Parcels to Parcel D.
- 5. Responsibility to Inspect and Maintain, Sharing of Maintenance Costs.** The Owner of Parcels C and D shall be, and is referred to herein as, the Responsible Party. The Responsible Party shall be responsible, at the Responsible Party's sole expense, for complying with the inspection and maintenance requirements of the Stormwater Management Facilities Maintenance Plan in section 9, below. The Responsible Party shall provide Owners of Parcels A, B, E, F, and G with thirty (30) days prior written notice of any pending inspection and maintenance activities and of the estimated costs of same. The costs and expenses for any such inspection and maintenance shall be consistent with the then prevailing "arms-length" market costs for providing such services in the City of Waukesha. Owners of Parcels A, B, E, F and G shall thereafter have twenty-one (21) days to notify the Responsible Party in writing of any objections to the proposed pending inspection and maintenance activities and/or estimated costs. Objections to inspection and maintenance activities required by this Agreement are restricted to objections concerning reasonable access to said Owner(s) Parcel(s), specific operational dates and/or times of pending activities, and estimated costs. Estimated costs shall be deemed reasonable if Responsible Party provides said Owners with quoted costs

information from at least three (3) potential providers. If qualifying written objections are received by the Responsible Party within the said objection period, the Responsible Party and said Owner(s) have not resolved said objection(s) within thirty (30) days after receipt of said objection(s), the dispute between Responsible Party and Owner(s) shall be submitted to final and binding arbitration before a single arbitrator mutually agreed to by the parties in order to obtain a resolution. If the parties cannot mutually agree on an arbitrator, the then Chief Judge of the Waukesha County Circuit Court shall appoint the arbitrator. If no written objections are received by the Responsible Party within the said objection period, or if any objection(s) had been resolved as outlined, the pending inspection and maintenance activities and the estimated costs shall be considered reasonable and necessary. The Owners of Parcels A, B, E, F, and G shall reimburse the Responsible Party for the reasonable and necessary costs and expenses of such inspection and maintenance, in the percentage share of the total costs and expenses as shown in the table below. The Responsible Party shall invoice the other Owners promptly upon completion of any inspection or maintenance work and shall include enough detail of the expenses to allow the other Owners to determine the nature and quantity of the expenses. Invoices for the reasonable and necessary inspection and maintenance work shall be payable net 30 days.

Parcel A..... 25.00%

Parcel B..... 25.00%

Parcel E, F & G 25.00%

6. **No Contribution for Intentional or Negligent Acts.** Regardless of section 5, if a court determines by final order that maintenance of the kinds required by section 9 was due in whole or in part to the negligent or intentional act or omission of an individual Owner, then reimbursement from the other Owners shall not be due under section 5, and the Owner whose act or omission was responsible for the necessitated maintenance shall be solely responsible for the expense of that maintenance.
7. **Storm Water and Erosion Control on Parcels A, B, C, E, F, and G.** Each Owner shall be responsible for compliance with the requirements of Waukesha Municipal Code Chapter 32, and all permits issued thereunder, on their respective Parcels. Nothing in this Agreement shall be construed to make any individual Owner responsible for maintenance of stormwater management practices on any other Owners' Parcels, except as specifically stated herein. Separate stormwater management practices maintenance agreements may be recorded against Parcels A, B, C, E, F, and G, and nothing in this Agreement shall be construed to relieve any Owner from any responsibilities thereunder.
8. **Amendments.** This Agreement may be amended by the Owners with the written approval of the City of Waukesha, and only upon the City's execution of the amendment document. Amendment shall be done by the recording of a separate document, and notice of the amendment shall be delivered to the Owners at their last-known addresses. Nothing in this Agreement shall be construed to limit the City's exercise of its statutory, regulatory, or common-law authority to address stormwater drainage or flood control.
9. **Storm Water Management Facilities Maintenance Plan.** The storm water management facilities subject to this Agreement are depicted in Exhibits A and B, and design data in Exhibit C. This section sets forth the minimum maintenance requirements to remain compliant with this Agreement, in perpetuity. Maintenance vehicle access is from Fleetwood Drive.
 - a. **System Description.** The wet detention basin is designed to trap 74% of sediment in runoff and maintain pre-development downstream peak flows and is designed to discharge to a culvert along STH 59/164. The main basin receives runoff from a 17.8 acre drainage area (10.2 acres from the Bryce Commerce Center lots and 7.6 acres from lands lying to the east.). During high rainfall or snow melt events, the water level will temporarily rise and slowly drain down to the elevation of the control structure. The water level is controlled by a 15-inch concrete pipe extending from the end section through the berm in the west side of the basin.
 - b. **Minimum Maintenance Requirements.** To ensure the proper long-term function of the storm water management facilities described in Exhibits A and B, the following activities must be performed:
 - i. All outlet pipes must be checked monthly to ensure there is no blockage from floating debris or ice. Any blockage must be removed immediately.

- ii. No trees are to be planted or allowed to grow on the earthen berms. Tree root systems can reduce soil compaction and cause berm failure. The berms must be inspected annually and any woody vegetation removed.
- iii. Invasive plant and animal species shall be managed in compliance with Wisconsin Administrative Code Chapter NR 40. This may require eradication of invasive species in some cases.
- iv. If the permanent pool falls below the safety shelf, a review shall be performed to determine whether the cause is liner leakage or an insufficient water budget. If the cause is leakage, the liner shall be repaired. Leakage due to muskrat burrows may require removal of the animals. If the permanent pool cannot be sustained at the design elevation, benching of the safety shelf may be necessary.
- v. If floating algae or weed growth becomes a nuisance (decay odors, etc.), it must be removed from the basin and deposited where it cannot drain back into the basin. Removal of the vegetation from the water reduces regrowth the following season by harvesting the nutrients. Wetland vegetation must be maintained along the water's edge for safety and pollutant removal purposes.
- vi. When sediment in the basin has accumulated to an elevation of three feet below the outlet elevation, it must be removed. See Exhibit B, Figure 2. All removed sediment must be placed in an appropriate upland disposal site and stabilized with grass cover to prevent sediment from washing back into the basin.
- vii. No grading or filling of the basin or berm other than for sediment removal is allowed, unless otherwise approved by the City of Waukesha.
- viii. Mowing around the basin may attract nuisance populations of geese to the Property and is not necessary or recommended.
- ix. Any other repair or maintenance as needed to ensure the continued function of the storm water facilities, or as ordered by the City of Waukesha.

c. **Inspections and Follow-Up Repairs.** The stormwater maintenance facilities on Parcel D shall be inspected twice yearly by a qualified professional, and a written report generated. The inspection report must include, at a minimum: (a) the inspectors name, address and telephone number, (b) the date of the inspection, (c) a condition report of the storm water management facilities, (d) all required corrective actions in order to comply with this maintenance plan and a reasonable time frame for completion, (e) follow-up documentation after completion of the corrective actions. Inspection reports are to be delivered to the attention of the City Engineer at the City of Waukesha Engineering Division on January 10th and July 10th each year. The Responsible Party shall complete all corrective actions, at the Responsible Party's sole expense, within the time frame stated in the inspection report, and the expenses shall be reimbursed to the Responsible Party pursuant to section 5. After the corrective action is completed, the inspector who filed the report shall verify that the work was properly completed and submit a follow-up report to the City within 30 days.

10. **Inspection by City, Remedies for Failure of Maintenance.** The Responsible Party grants to the City of Waukesha and its designees permission to enter upon Parcel D at any time to inspect the stormwater management facilities and easements on Parcel D. The City may, after conducting such inspections, give notice to the Responsible Party that work is required in order to bring Parcel D in compliance with the requirements of this Agreement, specifying the work, and the Responsible Party shall then have 60 days to complete the work, or such other time period that the City directs or agrees to in writing. This notice is in addition to the requirements of section 9.c, and is not limited by the terms of that section. If the Responsible Party does not complete the work as directed by the City, then the City and its contractors may enter onto Parcel D and complete the work and invoice the Responsible Party for the work, and the Responsible Party grants the City permission to enter onto Parcel D to do so. The invoiced amount may be added to the property tax bill for Parcel D as a special charge. The invoice shall be considered an expense for which reimbursement is due under section 5. This remedy shall be in addition to all other enforcement actions available to the City.

11. **Storm Water Management and Erosion Control Permit Termination.** The City of Waukesha acknowledges that the stormwater management facilities have been constructed on Parcel D, and acknowledges that the as-built drawings in Exhibit B, as certified by the attesting engineer, show that the facilities comply with all requirements of the City of Waukesha Storm Water

Management and Erosion Control Ordinance City at this time. Therefore, the stormwater management and erosion control permit issued for Parcel D is terminated.

12. **Incorporation of Attachments.** The attached Engineer Certification, Exhibit A – Location Map, Exhibit B – As-Built Drawings, and Exhibit C – Design Summaries, are incorporated into this Agreement by reference.
13. **Date of Execution.** This Agreement is executed as of the date of the last signature below.
14. **Drafter Identification.** This instrument was drafted by Brian E. Running, Waukesha City Attorney.

City of Waukesha

Shawn N. Reilly, Mayor

Date:_____

Gina L. Kozlik, City Clerk

Date:_____

State of Wisconsin }
 } ss.
Waukesha County }

Shawn N. Reilly and Gina L. Kozlik personally came before me the ____ day of February, 2018, signed this instrument in my presence, and acknowledged the same.

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

Waukesha State Bank

(sign above)
Print name: _____
Title: _____
Date: _____

(sign above)
Print name: _____
Title: _____
Date: _____

State of Wisconsin }
 } ss.
Waukesha County }

_____ and _____ personally came before me the _____ day of February, 2018, signed this instrument in my presence, and acknowledged the same.

(print name)
Notary Public, _____ County, Wisconsin
My commission (is permanent)(expires _____)

Convenience Store Investments, a Wisconsin limited partnership

(sign above)
Print name: _____
Title: _____
Date: _____

(sign above)
Print name: _____
Title: _____
Date: _____

State of Wisconsin }
 } ss.
_____ County }

_____ and _____ personally came before me the _____ day of February, 2018, signed this instrument in my presence, and acknowledged the same.

(print name) _____
Notary Public, _____ County, Wisconsin
My commission (is permanent)(expires _____)

PR Waukesha, LLC

Thomas N. Strauss, Manager

Date:_____

Dale D. Anderson, Manager

Date:_____

Robert C. Rehm, Jr., Manager

Date:_____

State of Wisconsin }
 } ss.
_____ County }

_____ and _____ personally came before me the _____ day of February, 2018, signed this instrument in my presence, and acknowledged the same.

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

Consent of Mortgagee

Equitable Bank, the Mortgagee under that certain Mortgage dated _____, 2017, and recorded as Document No. _____, made by PR Waukesha, LLC, in the office of the Register of Deeds in _____ County, Wisconsin, for itself and its successors and assigns, does hereby consent to the foregoing Stormwater Management Facilities Use and Maintenance Agreement, and agrees to be bound by the terms thereof.

(sign above)
Print name:_____
Title:_____

State of Wisconsin }
 } ss.
_____ County }

_____ personally came before me the _____ day of February, 2018, signed this instrument in my presence, and acknowledged the same.

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

Mad Dog Properties, LLC

(sign above)
Print name: _____
Title: _____
Date: _____

(sign above)
Print name: _____
Title: _____
Date: _____

State of Wisconsin }
 } ss.
Waukesha County }

_____ and _____ personally came before me the _____ day of February, 2018, signed this instrument in my presence, and acknowledged the same.

(print name)
Notary Public, _____ County, Wisconsin
My commission (is permanent)(expires _____)

Engineer Certification

Site: Bryce Commercial Center, consisting of Lots 1 and 2 of CSM 10535; Lots 1 and 2, and Outlots 1 and 2 of CSM 10537; and Lot 2 of CSM 10608, City of Waukesha, Wisconsin.

Stormwater Management Facility type: Wet basin

City of Waukesha Storm Water Management and Erosion Control Permit number: _____

The undersigned certifies to the City of Waukesha the following:

1. He is a professional engineer licensed by the State of Wisconsin.
2. He has personally inspected the stormwater management facilities located on Parcel D, described earlier in this Agreement, after construction of the facilities was complete and according to the inspection plans approved by the City of Waukesha.
3. He has personally inspected the original stormwater management facilities design plans approved by the City of Waukesha for the site, the stormwater management facilities design data shown in Exhibit C, and the as-built construction documentation shown in Exhibit B.
4. The stormwater management facilities design data shown in Exhibit C, and the as-built construction documentation shown in Exhibit B, comply with all applicable state and local technical standards and Chapter 32 of the Waukesha Municipal Code, and materially comply with the original design plans approved by the City of Waukesha.
5. Any variations from the originally-approved construction plans that are noted in Exhibit B are within the acceptable tolerances of standard construction techniques, and do not adversely affect the effectiveness of the original design plans approved by the City of Waukesha in a material way.

Robert Williams, Jr.

TDI Associates, Inc.

Date: _____

Exhibit A

Location Map of Storm Water Management Facilities Covered by this Agreement

The storm water management practices covered by this Agreement are depicted in the reduced copy of a portion of the construction plans, as shown below. The practices include one wet detention basin and all associated pipes, earthen berms, grassed overflow spillway, rock rip-rap and other components of these practices. The wet detention basin is located within Parcel D.

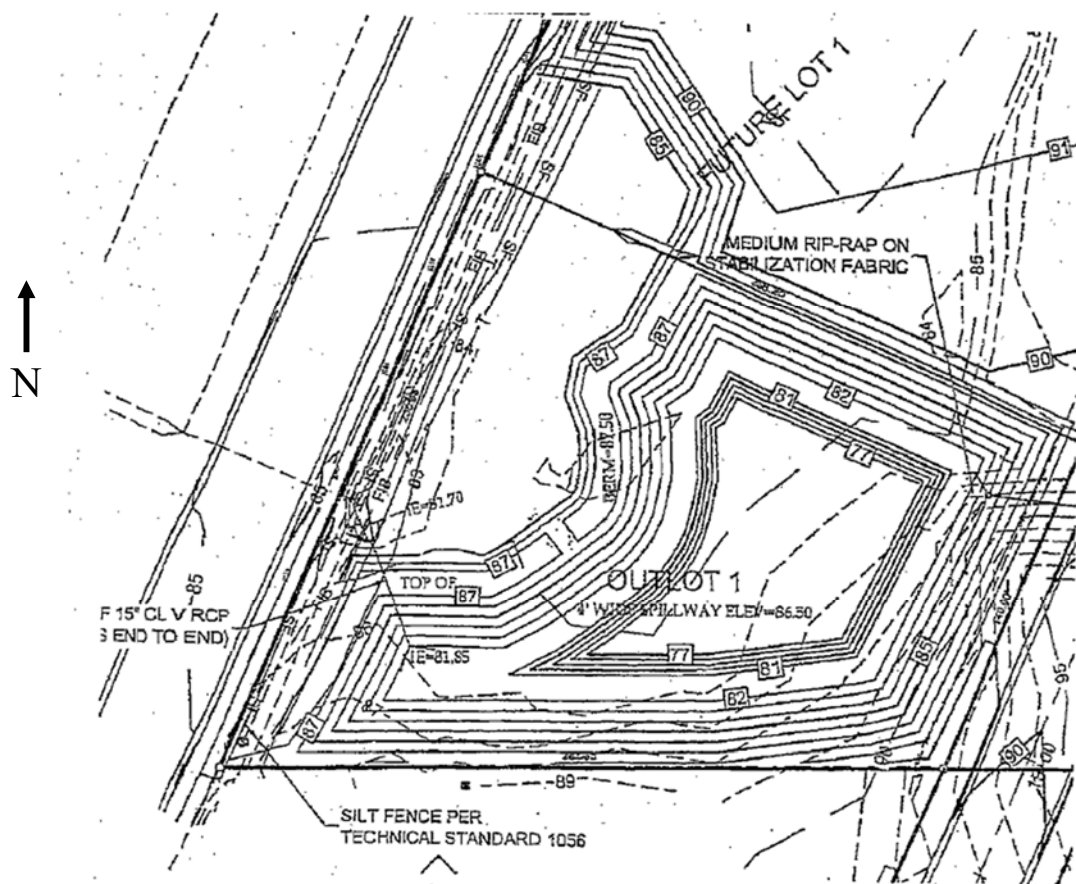


Exhibit B

As-built Drawings for Wet Detention Basin #1

Storm water practice: Wet Detention Basin

Location of practices: Parcel D

Figure 1:

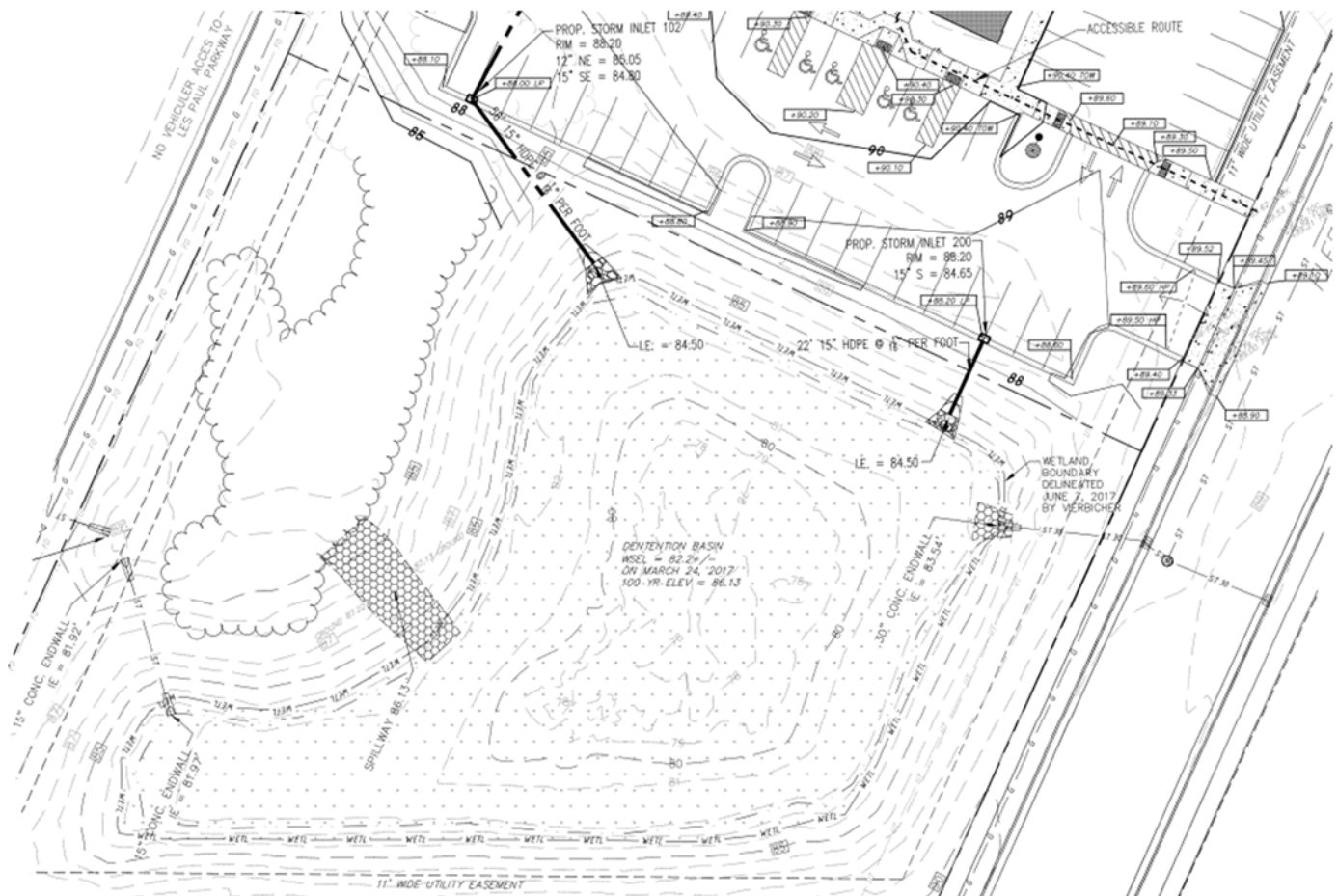
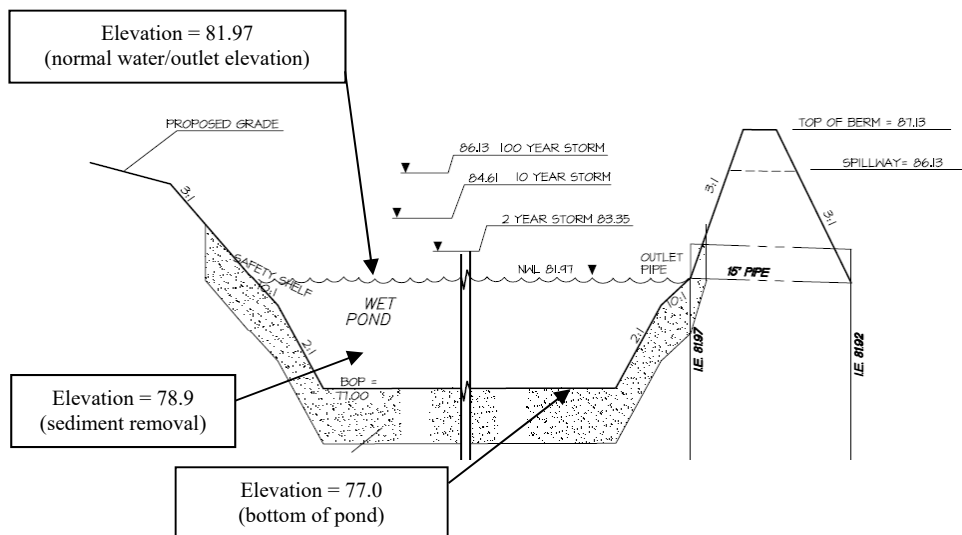


Figure 2:



Cross-Section A - A'

Exhibit C

Design Summaries for Wet Detention Basin

Number of Runoff Discharge Points: 1 Watershed (ultimate discharge): Fox River

Watershed Area (including off-site runoff traveling through project area): 17.6

Watershed Data Summary. The following table summarizes the watershed data used to determine peak flows and runoff volumes required to design the wet detention basin.

Summary Data Elements	Sub-watershed 10		Sub-watershed 20		Sub-watershed 30	
	Pre-develop	Post-develop	Pre-develop	Post-develop	Pre -develop	Post Develop
Watershed Areas (in acres) (see attached map)	10.2 acres	10.2 acres	3.3	3.3	4.3	4.3
Average Watershed Slopes (%)	2-8%	2-8%	3-6%	3-6%	3-6%	3-6%
Land Uses (% of each)	25% commercial, 75% vacant	100% commercial	100% multi family	100% multi family	100% single family	100% single family
Runoff Curve Numbers	72	88	67	67	73	73
Conveyance Systems Types	overland	100% storm sewer	100% overland	100% overland	100% overland	100% overland
Summary of Average Conveyance System Data	overland	Storm pipe	overland	overland	overland	overland
Time of Concentration	.21 hrs.	.10 hrs.	.17 hrs.	.17 hrs.	.14 hrs.	.14hrs.
25% of 2-yr 24-hr post-dev runoff volume	N/A	N/A	N/A	N/A	N/A	N/A
2-yr./24 hour Peak Flow (see attached hydrographs)	7.58 cfs	23.69 cfs	1.61 cfs	1.61 cfs	3.89 cfs	3.89 cfs
10-yr./24 hour Peak Flow	18.60 cfs	40.74 cfs	4.83 cfs	4.83 cfs	9.17 cfs	9.17 cfs
100-yr./24 hour Peak Flow	34.58 cfs	61.81 cfs	9.88 cfs	9.88 cfs	16.61 cfs	16.61 cfs

Practice Design Summary. The following table summarizes the data used to design wet detention basin.

Design Element	Design Data
Site assessment data: (see attached maps)	
Contributing drainage area to basin (sub-watershed A & B)	17.6 acres
Distance to nearest private well (including off-site wells)	> 100 feet
Distance to municipal well (including off-site wells)	> 1200 feet
Wellhead protection area involved?	No
Ground slope at site of proposed basin	average 3%
Any buried or overhead utilities in the area?	No
Proposed outfall conveyance system/discharge (w/ distances)	44 Ft. pipe to ditch in STH 164

Any downstream roads or other structures? (describe)	Yes – 15" RCP under STH 164
Floodplain, shoreland or wetlands?	Yes
Soil investigation data (see attached map & soil logs):	
Number of soil investigations completed	NA
Do elevations of test holes extend 3 ft. below proposed bottom?	NA
Average soil texture at pond bottom elevation (USDA)	Clay loam
Distance from pond bottom to bedrock	> 5 feet
Distance from pond bottom to seasonal water table	NA
General basin design data (see attached detailed drawings):	
Permanent pool surface area	.41 acres
Design permanent pool water surface elevation	elev. 81.97
Top of berm elevation (after settling) and width	elev. 87.13 / 10 feet wide
Length/width (dimensions/ratio)	225 ft. (L) x 140 ft. (W) = 1.5:1
Safety shelf design (length, grade, max. depth)	10 ft. @ 10% slope/1' deepest
Ave. water depth (minus safety shelf/sediment)	5 ft. (in center)
Sediment forebay size & depth	N/A
Sediment storage depth & design maintenance	2 ft. depth in pool 15 year maintenance schedule

Design Basin Inflow, Outflow & Storage Data				
Inflow Peak/Volume	Maximum Outflow Rate	Max. Water Elevation	Storage Volume at Max. Elev. (above perm. pool)	Outflow Control Structures*
25.12 cfs (Post 2-yr./24 hr. peak)	5.52 cfs	83.35 ft.	.84 acre feet	#1
48.28 cfs (Post 10-yr./24 hr. peak)	8.63 cfs	84.61 ft.	1.4 acre feet	#1
78.93 cfs (Post 100-yr./24 hr. peak)	11.30 cfs	86.13 ft.	2.3 acre feet	#1

* #1 = 15 inch orifice as culvert elev. @ 81.85

Watershed Map. The watershed map shown below was used to determine the post-development data contained in this exhibit. The post-developed watershed areas are the same as the pre-development watershed areas for this project.

