

**From:** [Ashenfelter, Barry J - DNR](#)  
**To:** [David.Farwell@milwaukeecountywi.gov](mailto:David.Farwell@milwaukeecountywi.gov)  
**Cc:** [Neumann, Riley D - DNR](#)  
**Subject:** FW: Milwaukee County - Property Acquisition Documentation  
**Date:** Friday, March 08, 2019 3:48:23 PM  
**Attachments:** [image001.png](#)  
[Aerial Photo \(2736 W Layton Avenue - Greenfield WI\).pdf](#)  
[Order for Judgment and Judgment - Tax Foreclosure \(Doc. 10703356\).pdf](#)  
[Parcel Report \(2736 W Layton Avenue - Greenfield WI\).pdf](#)  
[DNR Letter 1-23-19.pdf](#)

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Mr. Farwell –

Thank you for this reply to our request and for the information you provided. It's much appreciated.

My colleague Riley Neumann is the DNR, Remediation and Redevelopment Program, project manager for this property. He is copied on this email, and I am letting both of you know that I consider the [Wis. Stat. sec. 292.11\(9\)\(e\)](#) local government environmental liability exemption in effect for this property.

Riley, please add action code 611 (LGU Exempt) to the BRRTS case file and upload this email and attachments as documentation for that determination.

Please note that [Wis. Stat. secs. 292.11\(9\)\(e\)\(2\) and \(4\)](#) identify some of the conditions and limitations of the exemption.

Further, [Wis. Admin. Code sec. NR 708.17](#) is related to 292.11(9)(e)(4) and lists a few of the actions DNR may direct an exempt local government to take to protect health and safety when reusing a contaminated property.

Let me know if either of you have any questions.

Thanks again and best wishes,

Barry

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Barry Ashenfelter

Phone: 608-267-3120

[barry.ashenfelter@wisconsin.gov](mailto:barry.ashenfelter@wisconsin.gov)

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**From:** Farwell, David <David.Farwell@milwaukeecountywi.gov>  
**Sent:** Friday, March 08, 2019 3:29 PM  
**To:** Ashenfelter, Barry J - DNR <Barry.Ashenfelter@wisconsin.gov>  
**Subject:** Milwaukee County - Property Acquisition Documentation

Mr. Ashenfelter:

This is Dave Farwell, Assistant Corporation Counsel for Milwaukee County. Just yesterday my office received the attached letter dated January 23, 2019, relating to property located at 2736 W. Layton Avenue, Greenfield, Wisconsin (County Tax Parcel 599-8991) and requesting confirmation of ownership, among other things. I note from the letter that a response was requested within 30 days. My apologies on behalf of Milwaukee County for the lateness of this response. Per the request in the letter and the guidance in WDNR Publication RR-055, I can confirm the following:

- (1) The property is owned by Milwaukee County.
- (2) The property was acquired through tax delinquency foreclosure proceedings pursuant to Case No. 16CV005832, effective July 21, 2017.
- (3) An Order for Judgment and Judgment of the Milwaukee County Circuit Court confirming the *in rem* foreclosure and transfer of the property, a copy of which is attached to this email, was recorded with the Milwaukee County Register of Deeds on August 18, 2017 as Doc. No. 10703356 (the property is listed as Item No. 302 on page 8 of the recorded document).
- (4) A parcel report containing a map of the property, its legal description and the name of the owner (Milwaukee County Treasurer) and an aerial photograph obtained from the Milwaukee County Land Information Office online mapping tool are attached to this email. Per Milwaukee County Treasurer records, the prior owner was Jim Campbell. Our understanding is that the property may have been used for a furniture refinishing business and/or a dry cleaners.
- (5) The property is currently vacant and unoccupied. The County has no specific plans for the property. The County's ultimate goal is to sell the property and return it to the tax roll.

Please let me know if you have questions or need additional information in connection with this matter.

Regards,

Dave



**David N. Farwell | Assistant Corporation Counsel**

Milwaukee County Office of Corporation Counsel

901 N 9<sup>th</sup> Street, Suite 303 | Milwaukee, WI 53233

[David.Farwell@milwaukeecountywi.gov](mailto:David.Farwell@milwaukeecountywi.gov)

414.278.4268 (office) | 414.639.9049 (mobile)

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# MILWAUKEE COUNTY INTERACTIVE MAPPING SERVICE



Projection  
NAD\_1983\_2011\_StatePlane\_Wisconsin\_South  
\_FIPS\_4803\_Ft\_US

Notes

**DISCLAIMER:** This map is a user generated static output from the Milwaukee County Land Information Office Interactive Mapping Service website. The contents herein are for reference purposes only and may or may not be accurate, current or otherwise reliable. No liability is assumed for the data delineated herein either expressed or implied by Milwaukee County or its employees.



1:282



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10

**ORDER FOR JUDGMENT AND  
JUDGMENT**

Document Number

Document Title



8 0 2 6 1 9 9 4  
Tx:40174249

**DOC. # 10703356**

**RECORDED:**

**08/18/2017 2:13 PM**

**JOHN LA FAVE**

**REGISTER OF DEEDS**

**MILWAUKEE COUNTY, WI**

**AMOUNT: 30.00**

**FEE EXEMPT #: 77.25 (14)**

Recording Area

Name and Return Address

James M. Carroll  
Office of Corporation Counsel  
901 North Ninth Street, Room 303  
Milwaukee, WI 53233

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

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

IN THE MATTER OF THE FORECLOSURE OF  
TAX LIENS PURSUANT TO SECTION 75.521,  
WISCONSIN STATUTES, BY THE COUNTY OF  
MILWAUKEE, A MUNICIPAL CORPORATION,

CASE NO. 16CV005832

CASE CODE NO. 30405

LIST OF TAX LIENS FOR 2016, NO. 1

\$5.00 JUDGMENT FEE PAID  
JUL 31 2017

FILED

JUL 31 2017

ORDER FOR JUDGMENT AND JUDGMENT

CIRCUIT COURT  
MILWAUKEE COUNTY

The above-captioned action for *in rem* foreclosure of property tax liens pursuant to Wis. Stat. Section 75.521, having come for hearings on November 21, 2016, May 8, 2017, and June 6, 2017, before the Honorable John J. DiMotto, Petitioner Milwaukee County appearing by the Office of Corporation Counsel, by James M. Carroll, Assistant Corporation Counsel.

Sufficient proofs of alleged delinquent property tax having been presented to the Court and it appearing that:

On April 26, 1963, the County Board of Supervisors of Milwaukee County adopted an ordinance pursuant to Wis. Stat. Section 75.521, electing to proceed under the provisions of that statute with respect to the enforcement of collection of tax liens;

A Petition and List of Tax Liens for 2016 No. 1, containing the parcels of property affected by unpaid tax liens, as shown on the delinquent tax rolls of the Office of the County Treasurer of Milwaukee County, was filed in the Office of the Clerk of Circuit Court of Milwaukee County on August 3, 2016;

From the Affidavit of Publication and of No Answer attested to by the Milwaukee County Treasurer, David Cullen, a verified copy of the List of Tax Liens was posted in the Office of the Milwaukee County Treasurer on August 3, 2016;

From the Affidavit of Mailing, attested to by Bonnie Czerwinski, Treasury Accountant, pursuant to Wis. Stat. Section 75.521(3)(c), she deposited in the Milwaukee County Treasurer's Office mail for pick up by the Milwaukee County mail staff, for same day delivery by certified mail, return receipt requested, a copy of the Petition and List of Tax Liens in the above-captioned action, the original of which is on file, securely enclosed in an envelope with postage duly prepaid, addressed to each of the owners, mortgagees of record, the State of Wisconsin if the instances specified in Wis. Stat. Section 75.521(3)(am)2. existed, and to each municipality other than Milwaukee County having any right, title, or interest in the land or the tax lien or the proceeds thereof;

The Petition and List of Tax Liens together with a notice in the form required by Wis. Stat. Section 75.521(6) was published in the Daily Reporter, a newspaper possessing the qualifications specified in Wis. Stat. Section 985.03, once per week, for three (3) consecutive weeks, with the dates of publication being August 15, August 22, and August 29, 2016; specifying October 11, 2016, as the last day for redemption of such tax liens described in said List of Tax Liens;

Pursuant to Wis. Stat. Section 75.521(7)(b), the deadline by which an answer in this action must be served was November 10, 2016, and from the Affidavit of Publication and of No Answer attested to by Milwaukee County Treasurer, no answers were served upon him;

Pursuant to Wis. Stat. Section 75.521(12), Attorney John D. Dobroski was appointed to serve as guardian ad litem for all persons known or unknown who have or may have an interest in the lands described in the 2016 List of Tax Liens No. 1, and who are or may be minors or individuals adjudicated incompetent at the date of the filing of said list; and the report prepared by Guardian ad Litem Dobroski indicates the list does not contain any minors or individuals adjudicated incompetent;

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED:

1. Due to failure to redeem or answer, Milwaukee County, a Wisconsin municipal body corporate, is vested with an estate in fee simple absolute against any person having the right to redeem or answer within the aforementioned time period, and against all persons claiming through that person, from the date of the filing of said Petition and List of Tax Liens with the Clerk of Circuit Court, and said parties shall be and are hereby forever barred and foreclosed of all his or her rights, title, and interest in, and to the parcel described in such list of tax liens, and a judgment in foreclosure is herein granted by this Court; however, subject to all unpaid taxes and charges which are liens thereon, and to all recorded restrictions as provided by Wis. Stat. Section 75.14.
2. The properties remaining unredeemed and affected by this judgment, subject to instant entry of judgment, all situated in the County of Milwaukee, State of Wisconsin, are as follows:

**Item No. 8**

Description:

ASSESSMENT SUBD NO 93 LOT 6 BLK 4

Property Address:

5564 South Disch Avenue

City of Cudahy

Tax Key No.:

677-0048

**Item No. 11**

Description:

CERTIFIED SURVEY MAP NO 1205 PARCEL 1  
EXC S 30 FT FOR STREET ID 2016 E NORSE  
AVE

Property Address:

2016 E NORSE AVE, CUDAHY

Tax Key No.:

684-8998-005

**Item No. 27**

Description:

SURVEY MAP NO 5450 NE 19

Property Address:

West Plainfield Avenue

City of Greenfield

Tax Key No.:

575-8907-005



**Item No. 28**

**Description:**

W PLAINFIELD AV CERTIFIED SURVEY MAP  
NO 5450 NE 19 6 21 PARCEL 2

**Property Address:**

West Plainfield Avenue  
City of Greenfield

**Tax Key No.:**

575-8907-006

**Item No. 29**

**Description:**

W PLAINFIELD AV CERTIFIED SURVEY MAP  
NO 5450 NE 19 6 21 PARCEL 3

**Property Address:**

West Plainfield Avenue  
City of Greenfield

**Tax Key No.:**

575-8907-007

**Item No. 42**

**Description:**

S 5 ACS OF W 10 ACS OF S 15 ACS OF N 30 ACS  
OF S 80 ACS OF NW 1/4 SEC 5-5-22 EXC RR 4.31  
ACS

**Property Address:**

6548 South 13<sup>th</sup> Street  
City of Oak Creek

**Tax Key No.:**

717-9986-000

**Item No. 43**

**Description:**

S 5 ACS OF W 10 ACS OF S 15 ACS OF N 30 ACS  
OF S 80 ACS OF NW 1/4 SEC 5-5-22 & EXC PARTS  
CONVEYED IN DOC# 09878874 FOR S 13TH STR  
(4.419 ACS)

**Property Address:**

6548 South 13<sup>th</sup> Street  
City of Oak Creek

**Tax Key No.:**

717-9986-001

**Item No. 44**

**Description:**

N 5 ACS OF W 10 ACS OF S 15 ACS OF N 30 ACS  
OF S 80 ACS OF NW 1/4 SEC 5-5-22 EXC RR 4.27  
ACS

**Property Address:**

6524 South 13<sup>th</sup> Street  
City of Oak Creek

**Tax Key No.:**

717-9987-000

**Item No. 45**

**Description:**

N 5 ACS OF W 10 ACS OF S 15 ACS OF N 30 ACS  
OF S 80 ACS OF NW 1/4 SEC 5-5-22 & EXC PARTS  
CONVEYED IN DOC# 09878874 FOR S 13TH STR  
(4.200 ACS)

**Property Address:**

6524 South 13<sup>th</sup> Street

City of Oak Creek

**Tax Key No.:**

717-9987-001

**Item No. 58**

**Description:**

ALL THAT PART OF N1/2 OF S1/2 OF S1/2 OF  
NW1/4 SEC. 27-5-22 LYING E OF C&NW RR CO.  
ROW EXC FORMER CNS&M RR ROW. CONT.  
9.25 ACS.

**Property Address:**

9841 South Pennsylvania Avenue

City of Oak Creek

**Tax Key No.:**

909-9993-001

**Item No. 59**

**Description:**

N 1/2 OF SE 1/4 OF NW 1/4 SEC 27-5-22 LYING  
SLY OF RELOCATED STATE TRUNK HWY 100  
EXC FORMER CNS&M RR ROW & PT  
CONVEYED IN DOC # 8687199 (8.096 ACS)

**Property Address:**

9761 South Pennsylvania Avenue

City of Oak Creek

**Tax Key No.:**

909-9994-001

**Item No. 60**

**Description:**

COM IN E LI OF W1/2 OF NW 1/4 SEC 27-5-22  
1086.30 FT S OF N LI & ON WLY ROW LI OF  
FORMER CNS&M RR TH S ON E LI OF W1/2 OF  
SD 1/4 SEC 879 FT W 42.50 FT NWLY ALG ELY  
LI OF C&NW RR ROW 1463.90 FT TO INTERSEC  
WITH WLY ROW LI OF FORMER CNS&M RR TH  
SELY ALG SD FORMER ROW LI 615.50 FT TO  
BEG., EXC 200 FT ROW FOR RELOCATED  
HWY 100. CONT. 2.641 ACS.

**Property Address:**

9781 South Pennsylvania Avenue

City of Oak Creek

**Tax Key No.:**

909-9995-001

**Item No. 116**

**Description:**  
**Property Address:**  
  
**Tax Key No.:**

**MC GEOCHS LINC AVE ADD LOT 7 BLK 5**  
**2227, 2229 South 58<sup>th</sup> Street**  
**City of West Allis**  
**474-0391-002**

**Item No. 139**

**Description:**  
**Property Address:**  
  
**Tax Key No.:**

**GROSS WEST ALLIS ADD. LOT 1 BLK 18**  
**2001 South 70<sup>th</sup> Street**  
**City of West Allis**  
**453-0926-000**

**Item No. 153**

**Description:**  
  
**Property Address:**  
  
**Tax Key No.:**

**1651 S 53 ST HILLVIEW ADDITION LOT 16 BLK**  
**5**  
**1651 South 53<sup>rd</sup> Street**  
**Village of West Milwaukee**  
**455-1175-000**

**Item No. 158**

**Description:**  
  
**Property Address:**  
  
**Tax Key No.:**

**ACME REALTY COMPANY SUBD. NO. 1 LOT 37**  
**& S 24' LOT 38 BLK. 2**  
**5966 North Santa Monica Boulevard**  
**Village of Whitefish Bay**  
**165-0046-000**

**Item No. 225**

**Description:**  
**Property Address:**  
  
**Tax Key No.:**

**KALMAN & BECKER HEIGHTS LOT 14 BLK 1**  
**3269 East Lunham Avenue**  
**City of Cudahy**  
**590-0204**

**Item No. 226**

**Description:**  
  
**Property Address:**  
  
**Tax Key No.:**

**ADD NO 1 TO TOWNSITE OF CUDAHY LOT 20**  
**W 3.5 FT LOT 21 BLK 36**  
**3802 East Barnard Avenue**  
**City of Cudahy**  
**632-0181**

**Item No. 273**

**Description:**  
**Property Address:**  
  
**Tax Key No.:**

**FLORENTINE MANOR LOT 15 BLK 1**  
**11321 West Mayers Drive**  
**City of Franklin**  
**799-0027-000**

**Item No. 282**

**Description:** PORT HAMPTON SE1/4 SEC 32-8-22 LOT 4 BLK  
2  
**Property Address:** 4893 North Navajo Avenue  
City of Glendale  
**Tax Key No.:** 203-1123-000

**Item No. 288**

**Description:** GREENDALE CENTER E 55 FT OF LOT 1 BLOCK  
1  
**Property Address:** 5597 Apple Court  
Village of Greendale  
**Tax Key No.:** 663-0002-000

**Item No. 302**

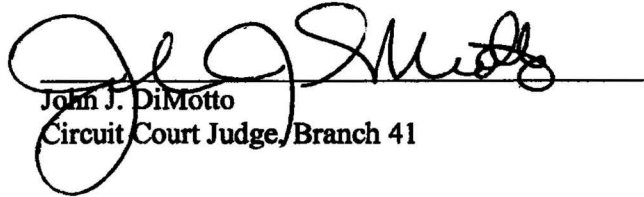
**Description:** 2736 W LAYTON AV W 50 FT OF E 370 FT OF S  
180 FT OF SE 24 6 21 EXC S 60 FT FOR AVE  
**Property Address:** 2736 West Layton Avenue  
City of Greenfield  
**Tax Key No.:** 599-8891

IT IS FURTHER ORDERED that in the event that any respondent, heir, successor, assignee, or other person or entity is in possession of any parcel for which judgment is granted, Petitioner Milwaukee County may, without further notice, obtain a writ of assistance from this Court ordering the Milwaukee County Sheriff's Office to (1) remove all persons found upon the premises claiming under the Respondent, including heirs, successors, assignees, other persons or entities, using such reasonable force as is necessary; (2) remove or supervise removal of all personal property found on the premises not the property of Milwaukee County, using such reasonable force as is necessary, unless Milwaukee County or its agent states that it will remove and store or dispose of the personal property; (3) exercise ordinary care in the removal or supervision of removal of all persons from the premises, in the removal or supervision of removal of personal property, and in the handling and storage of all property removed from the premises; (4) store and dispose of any removed personal property according to law unless Milwaukee County or its agent states that it will remove and store or dispose of the personal property found in the premises; and (5) complete a sheriff's report and

return the original writ to the Court and a copy to the Office of Corporation Counsel. Respondent and any person or entity claiming under the Respondent are enjoined from committing waste upon the premises and from taking any other action that may impair the value of the premises.

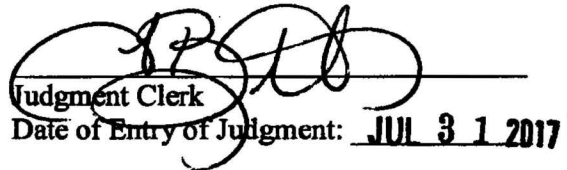
Dated at Milwaukee, Wisconsin this 21 day of July, 2017.

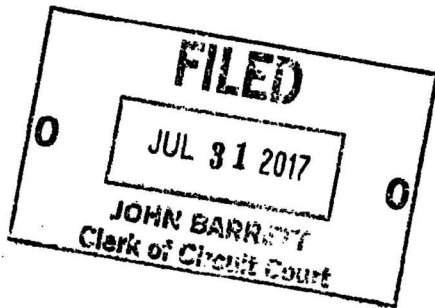
BY THE COURT:

  
John J. DiMotto  
Circuit Court Judge, Branch 41

John Barrett, Clerk of Circuit Courts

By:

  
Judgment Clerk  
Date of Entry of Judgment: JUL 31 2017



Order Prepared By:  
Office of Corporation Counsel  
901 N. 9<sup>th</sup> Street, Room 303  
Milwaukee, WI 53223  
(414) 278-4300

STATE OF WISCONSIN  
MILWAUKEE COUNTY

SS.

I, the undersigned Clerk of the Court of Milwaukee County, Wisconsin do hereby certify that I have compared this document with the original on file and that the same is a full, true and correct copy of said original and of the whole thereof, as the same remains of record in my office.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court.

this

AUG 16 2017

date

John Barrett

JOHN BARRETT  
Clerk of Circuit Court

# Milwaukee County Land Information Parcel Report

**TAXKEY: 5998891000**

Report generated 3/8/2019 3:12:51 PM



Parcel location within Milwaukee County



Selected parcel highlighted

## Parcel Information

**TAXKEY:** 5998891000

**Record Date:** 12/31/2017

**Owner(s):** MILWAUKEE COUNTY TREASURER

**Address:** 2736 W LAYTON AVE

**Municipality:** Greenfield

**Acres:** 0.14

**Parcel Description:** COUNTY

**Zoning Description:**

**Legal Description:** 2736 W LAYTON AV W 50 FT OF E 370 FT OF S 180 FT OF SE 24 6 21 EXC S 60 FT FOR AVE

**School District:** GREENFIELD

**Assessed Value:** \$152,000

**Land Value:** \$61,000

**Improvement Value:** \$91,000

January 23, 2019

MILWAUKEE COUNTY  
TREASURER

BRRTS#: 02-41-558578

Milwaukee County Treasurer  
901 N. 9<sup>th</sup> Street, Room 102  
Milwaukee, WI 53233

2019 JAN 29 P 1:33

**Subject:** Request for property acquisition documentation related to state statutory local governmental unit environmental liability exemptions potentially available at: 2736 W. Layton Avenue Property, 2736 W. Layton Ave., Greenfield, WI 53221 County Tax Parcel # 5998891000

Dear Milwaukee County Treasurer:

The discharge of a hazardous substance to the land, air, or water of the state (i.e. the presence of environmental contamination) has been reported to the Department of Natural Resources (DNR) on property located at 2736 W. Layton Ave., Greenfield, WI 53221 (2736 W. Layton Avenue Property) subsequently referred to in this letter as the "Property."

Based on information available to us, it is our understanding that the Milwaukee County Treasurer is the owner of the Property. The DNR seeks to determine whether this property ownership information is accurate and, if so, to find out whether the Property was acquired in a manner consistent with Wis. Stat. §§ 292.11(9)(e)(1m) and 292.23, which authorize the local government Spill Law and Solid Waste Management liability exemptions.

### **Request for Information**

**Please respond within 30 days to avoid having the Milwaukee County Treasurer automatically identified as a party responsible for environmental investigation and remediation at the Property.**

Please let DNR know in the next 30 days if the Milwaukee County Treasurer currently owns the Property, and, if so, how the Milwaukee County Treasurer acquired the Property. Review the enclosed DNR fact sheets, RR-055 and RR-579, and use RR-055 to guide your preparation of a response to DNR. Include appropriate documentation with your response to demonstrate compliance with the statutory requirements necessary to obtain the Spill Law and Solid Waste Management liability exemptions at the Property.

If the Milwaukee County Treasurer does not currently own the Property, please notify DNR of this fact within 30 days of the date of this letter and identify the current owner. Also, please inform us of the dates of past ownership, if any, of the Property by the Milwaukee County Treasurer.

### **DNR Acknowledgement of Your Response**

DNR staff in the Remediation and Redevelopment Program will review your response to this letter and the documentation that you provide. If DNR determines that your documentation is sufficient, you will receive a letter from DNR acknowledging your submittal. A corresponding notation for the Property will be entered into the Bureau for Remediation and Redevelopment Tracking System (BRRTS) database, which is accessible at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.



Milwaukee County Treasurer, January 23, 2019  
2736 W. Layton Ave., Greenfield, WI 53221, BRRTS #: 02-41-558578

If a property acquisition scenario is significantly complicated or unclear, an in-depth DNR review may be needed to make an agency determination. In these situations, it may be necessary for a local governmental unit to request a fee-based liability clarification letter. DNR will inform you if this situation should arise.

If you do not provide timely documentation, or if DNR determines that your documentation clearly makes your local government not eligible for the LGU exemption, then, as is standard procedure, the Milwaukee County Treasurer will receive a Responsible Party letter from DNR that outlines next steps related to the required environmental investigation and remediation of the Property.

### **DNR Liability Clarification Letters**

If the Milwaukee County Treasurer would like a written determination from DNR about the applicability of the statutory environmental liability exemptions available to local governmental units at the Property, or any property, you can request a liability clarification letter by completing DNR Form 4400-237, available at <http://dnr.wi.gov/files/PDF/forms/4400/4400-237.pdf>, and submitting the corresponding fee.

DNR can provide liability clarification letters before or after property acquisition. Letters issued before acquisition can act as guidance and letters issued after acquisition document DNR's determination.

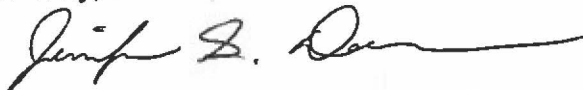
### **Public Availability of Documents**

Information you submit to DNR in response to this letter will be placed in DNR's file for the Property, and tracked in a publicly available DNR database called BRRTS on the Web, which is available at <http://dnr.wi.gov/topic/Brownfields/wrrd.html>.

**Please direct your replies to this letter, and any questions to:** Barry Ashenfelter, DNR-RR/5, 101 S. Webster St., Madison, WI 53707-7921. Phone: (608) 267-3120;  
Email: [barry.ashenfelter@wisconsin.gov](mailto:barry.ashenfelter@wisconsin.gov).

Thank you for your attention and prompt response to this inquiry.

Sincerely,



Jennifer S. Dorman  
Remediation & Redevelopment Program

### **Enclosures**

- Milwaukee County Interactive Map Service
- Table 1 – VOC Analytical Results – Soil Samples
- RR 055: LGU Liability Exemption Fact Sheet
- RR 579: State & Federal Liability Protections for Local Governmental Units

ECopy – Riley Neumann & Barry Ashenfelter, DNR



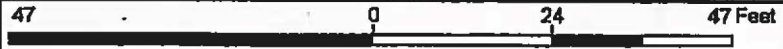
# MILWAUKEE COUNTY INTERACTIVE MAP SERVICE



### Legend

- County Boundary
  - Highways, to 8k
  - Street Centerlines, 0k to 8k
  - Railroad 8k
  - Water 8k
  - Rivers 8k
  - Airport 8k
  - Landmarks 8k
  - County Parks 8k
  - Municipal Subdivisions 25k
  - Tax Parcels
- 2010(High Res) NAT CLR
- Red: Band\_1
  - Green: Band\_2
  - Blue: Band\_3

1: 284



**DISCLAIMER:** This map is a user generated static output from the Milwaukee County Land Information Office Interactive Mapping Service website. The contents herein are for reference purposes only and may or may not be accurate, current or otherwise reliable. No liability is assumed for the data delineated herein either expressed or implied by Milwaukee County or its employees.

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THIS MAP IS NOT TO BE USED FOR NAVIGATION

### Notes

Enter Map Description

**Table 1**  
**VOC Analytical Results - Soil Samples**  
**2736 West Layton Avenue**  
**Greenfield, Wisconsin**

Sample Location	Sampling Date	PID (iu)	1,1-Dichloro-ethene (ppb)	cis-1,2-Dichloro-ethene (ppb)	trans-1,2-Dichloro-ethene (ppb)	Tetrachloro-ethene (ppb)	Trichloro-ethene (ppb)	Vinyl chloride (ppb)
P-1: 4-6 FT	3/14/2012	3	28.1J	193.0	82	8,600	1,970	<16
P-2: 2-4 FT	3/14/2012	<1	<22	<14.0	<22	490	<17	<16
P-3: 2-4 FT	3/14/2012	<1	<22	<14.0	<22	<24	<17	<16
P-4: 0-2 FT	3/14/2012	<1	<22	<14.0	<22	1,140	<17	<16
Calculated SSL GW		-	NS	*27	*49	*4.1	*3.7	*1.3
Calculated SSL DC		-	NS	156,000	NS	1,320	14	46

\* indicates a calculated soil screening level (SSL) protection of groundwater.  
 Note: Concentrations that exceed their calculated SSL for the protection of groundwater are in *blue italics*.  
 Note: Concentrations that exceed the calculated SSL for direct contact are in **blue bold**.



## Local Government Environmental Liability Exemptions in Wisconsin

The Hazardous Substance Spills Law, Wis. Stat. § 292.11, requires any person or entity that causes, possesses or controls a hazardous substance discharge to take action to restore the environment to the extent practicable.

Wis. Stat. § 292.11(9)(e) exempts counties, municipalities, and other “local governmental units” from environmental investigation and cleanup responsibilities at properties they own when the local government obtains title to a contaminated property in a specific way, and other conditions are satisfied.

In addition, Wis. Stat. § 292.23 exempts local governmental units from solid waste management standards and rules. Wis. Stat. § 292.26 provides civil immunity to local governmental units for hazardous substances discovered at certain properties formerly owned by the local governmental unit.

The term local governmental unit (LGU) is defined as any county, city, town, village, town sanitary district, county utility district, public inland lake protection and rehabilitation district, metropolitan sewage district, a redevelopment authority created under Wis. Stat. § 66.1333, a public body designated by a municipality under Wis. Stat. § 66.1337(4), a community development authority, or a housing authority.

### The method used to acquire the property is crucial

To obtain state law environmental liability exemptions at a specific property, a local government **must** acquire title to the property in one of the following ways: a) through tax delinquency proceedings; b) through an order of a bankruptcy court; c) from another local governmental unit that is exempt; d) through condemnation under Wis. Stat. Ch. 32; e) for the purpose of blight elimination (using a state or federal process law); f) through escheat; or g) with a DNR Stewardship grant.

### The state’s local government liability exemption has limits and conditions

The local government liability exemption applies to pre-existing contamination in soil, groundwater, sediment and surface water on the property that was caused by an individual or entity other than the local governmental unit. No liability exemption is available for those hazardous substance discharges caused or exacerbated, either actively or negligently, by the local governmental unit. Wis. Stat. §§ 292.11(9)(e)(2) and (4) detail these limitations.

The DNR recommends that a local government analyze unidentified substances in containers stored above ground on the property, and properly secure or dispose of these containers. Further, when property reuse is planned, a local government should notify the DNR and work together to ensure that any substantial health threats are mitigated during the redevelopment activities. Failing to do so may end the exemption.

The state local government environmental liability exemption only applies to the investigation and cleanup of contaminated property and solid waste management. Local governments are not exempt from other environmental laws, such as reporting requirements for newly discovered discharges, removing underground tanks, etc.

### The DNR can provide liability clarification letters

The local government environmental liability exemption is automatically conferred when statutory conditions are satisfied. No approval from the DNR is required. However, the DNR can provide a written liability clarification opinion letter if desired. A fee is required for all types of Wisconsin law environmental liability clarification letters. Use the DNR Form 4400-237 to request a liability clarification letter. Visit the U.S. EPA’s website for information about federal landowner liability protections, <https://www.epa.gov/enforcement/landowner-liability-protections>.

## **Local governmental unit exemption - verification information to provide to the DNR**

When requesting a liability clarification letter from the DNR, or asserting fulfillment of the statutory requirements that confer a local government environmental liability exemption at a specific property, the DNR requests that local governments instruct their municipal attorney to submit and verify the following information. The DNR will use this documentation to inform the agency's determination.

### **1. Identify how or why the property was acquired.**

- Through tax delinquency foreclosure proceedings
- Through condemnation or other eminent domain proceedings under Wis. Stat. Chapter 32
- For the purpose of blight elimination (as described in a state or federal process law)
- From another local governmental unit that previously acquired an exemption at the property
- Through an order of a bankruptcy court; or through escheat
- With the proposed use of Knowles-Nelson Stewardship grant funds

### **2. Provide documentation of the property acquisition method.**

Along with a memo summarizing the acquisition, provide one or more of the following documents, or other relevant documentation, to verify the method used to acquire title to the property.

#### **For tax delinquency acquisitions**

- Court order assigning title; the new deed; an explanation of county's transfer to the LGU

#### **For acquisition via condemnation**

- Memo outlining the steps followed under Wis. Stat. Ch. 32; a copy of the deed assigned to the LGU; and a copy of any negotiated agreement involved in the transfer

#### **For acquisitions for the purpose of blight elimination**

- Blight determination documentation based on a Wis. Stat. Ch. 66 definition of blighted property or area and a related process, public hearing results and a municipal resolution approving the blight determination; Or a local resolution approving the creation of a tax incremental financing district for blight elimination; Or evidence of a blight designation via a federal law process.

#### **For title transfers from another exempt local governmental unit**

- Documentation of the prior LGU owner's method of property acquisition and the process used to transfer property to the current LGU owner

#### **For acquisition through bankruptcy**

- Bankruptcy court order, with language assigning property to the LGU highlighted

#### **For acquisition by escheat or with Stewardship grant funds**

- Contact the DNR-RR LGU specialist for assistance. Contact information is listed below.

### **3. Provide other property data.**

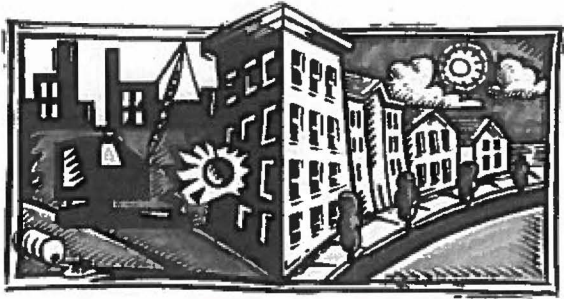
- Property address, legal description and/or the PLSS 1/4, 1/4 section description
- A map or aerial photo of the property and a summary of current uses
- Name of current and previous owner (title holder)
- List of intended or potential new uses for the property
- Description of any environmental investigations at the property
- Summarize the DNR license history if the property was previously used as a dump or landfill
- The date, or proposed date, of title transfer and property acquisition

**Send materials to: Barry Ashenfelter, DNR RR/5, 101 S. Webster St., Madison, WI 53707-7921.**

**Contact Barry at 608-267-3120 or [barry.ashenfelter@wisconsin.gov](mailto:barry.ashenfelter@wisconsin.gov) with questions and comments.**

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# State & Federal Liability Protections for Local Governmental Units

RR-579

October 2013

## Introduction

Local Governmental Units (LGUs) in Wisconsin have an important role in the cleanup and redevelopment of brownfields, which are defined as “abandoned, idle or underused commercial or industrial properties, where expansion or redevelopment is hindered by real or perceived contamination.”

Fortunately, state and federal laws provide incentives for LGUs to acquire and redevelop brownfield properties, without incurring liability for the contamination. A table summarizing these state and federal liability protection incentives is included in this fact sheet (see p.5).

This fact sheet offers a concise overview of how state and federal liability protections work, and what LGUs can do to safely acquire and transform these properties. Also included is a brief discussion on the importance of CERCLA (federal Superfund Law) liability protections for LGUs applying for federal cleanup funding—either federally or state administered upon acquiring a contaminated property.

## State Liability Protections

### **LGU Liability Exemption from Wisconsin’s Spill Law**

Assuming the LGU did not cause the contamination, it can be eligible for the Local Governmental Liability Exemption by acquiring a contaminated property in accordance with state law (s. 292.11(9)(e)1m, Wis. Stats.). The eight eligible methods of acquisition include:

- Tax delinquency;
- Bankruptcy proceedings;

- Condemnation;
- Eminent domain (according to Ch. 32, Wis. Stats.);
- Escheat (no legal property heirs);
- For the purposes of slum clearance or blight elimination (according to s. 66.1333, Wis. Stats.);
- By using Stewardship funds; or,
- Acquiring from another eligible LGU.

### **Who qualifies as an LGU under the Wisconsin Spill Law?**

The following entities qualify as Local Governmental Units (LGU) for Spill Law liability exemptions:

- city;
- town;
- village;
- county;
- county utility district;
- town sanitary district;
- public inland lake protection and rehabilitation district;
- metropolitan sewage district;
- redevelopment authorities created for blight elimination;
- other public bodies designated by a municipality for urban renewal;
- a community development authority; or,
- a housing authority.

The state liability exemption protects an LGU from investigation and clean up responsibilities, *unless* the spill is caused by an action taken by the LGU, or by the LGU’s failure to take “limited actions” to prevent further spills. Those limited actions are:



Wisconsin Department of Natural Resources  
P.O. Box 7921, Madison, WI 53707  
dnr.wi.gov, search “brownfield”



- Restricting access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property;
- Sampling and analyzing unidentified substances in containers stored above-ground on the property; and,
- Removing and disposing, or properly storing, any hazardous substances in above-ground containers that are leaking or likely to leak.

An LGU planning to redevelop and re-use a contaminated property that it owns, is advised to work closely with the DNR, starting early in the process, to determine what actions should or should not be taken on the property. The DNR can help the LGU avoid actions that could cause or exacerbate discharges of hazardous substances on the property. Together these parties can also evaluate and select site development plans and construction techniques that will protect health and safety associated with onsite risks, and ensure the LGU retains the liability exemption. Even exempt LGUs are required to:

- Remove any abandoned or unused underground storage tanks that are present on the property;
- Mitigate public health threats if deemed necessary by the DNR with regard to future development; and
- Notify the DNR immediately about the discharge of any hazardous substances on the property.

The liability exemption cannot be transferred to another party, except for another eligible LGU.

#### **Liability Clarification Letters**

The DNR's Remediation and Redevelopment Program can assist LGUs by clarifying environmental liability at a property with soil or groundwater contamination. Upon request, DNR can provide a fee-based (\$700) liability clarification letter that explains how the LGU exemption applies to a specific property. Use our Technical Assistance and Environmental Liability Clarification Request (Form 4400-237) to request a liability clarification letter, or contact your DNR project manager for details.

#### **Solid Waste Exemption**

There are several thousand known properties in Wisconsin where past disposal of solid waste has occurred. Many local governments are reluctant to take title to a property with an unlicensed landfill on it (e.g., an historic foundry sand disposal site), due to concerns about the long-term environmental liability and costs. Section 292.23(2)(a-f), Wis. Stats. exempts the local government from certain parts of the Wisconsin Solid Waste Law (ch. 289, Wis. Stats.) if an LGU acquires an unlicensed landfill through any of the eight methods listed within the statute (see pg. 1 for a list).

The properties must contain solid waste sites or facilities that have never been licensed by the DNR. The LGU cannot have owned, operated, or taken waste to the site. The exemption is modeled after the LGU Liability Exemption under the Spill Law. However, the LGU would be responsible for maintaining pre-existing systems (e.g., landfill cover, gas or leachate collection, monitoring, etc.)

The local government is required to prevent any unacceptable exposures to wastes or contamination when the property is put to its intended use. Written approval from DNR is required for building on an abandoned landfill. See publications RR-683, RR-684, and RR-685 for more information on this process. The LGU would also be required to maintain and monitor any existing environmental control systems for the landfill. Communities that are landlocked may be able to use these past disposal properties for public purposes and green space, as well as economic development purposes.

#### **Hazardous Waste Exemptions**

Section 292.24, Wis. Stats., exempts LGUs from certain hazardous waste requirements with respect to hazardous waste discharges on property acquired through any of the methods listed in ch. 292.11, Wis. Stats.(see pg. 1), if all the following conditions have been met:

- DNR-approved investigation is conducted that identifies hazardous waste discharges;
- hazardous waste discharges are cleaned up;
- LGU receives an approval from the DNR that the hazardous waste has been satisfactorily cleaned up;

- LGU maintains and monitors the property;
- LGU did not cause the hazardous waste discharge; and
- Hazardous waste treatment, storage, or disposal facility is not operated on the property after the date that the LGU acquired the property.

The DNR and the US EPA have also discussed additional ways to strengthen the Resource Conservation and Recovery Act (RCRA) hazardous waste exemption for sites that have a history of hazardous waste management activities. On October 26, 2009, DNR received EPA approval for a permanent program authorizing the DNR to exercise enforcement discretion, on a case-by-case basis, at sites with hazardous waste backgrounds. The EPA approval for this policy is dated December 6, 2006.

To request a RCRA enforcement discretion determination letter for a site with hazardous waste contamination, the LGU must request a general liability clarification letter from the DNR for a property they intend to acquire under the provisions of s. 292.11(9)(e), Wis. Stats. The DNR will then have the case-by-case discretion to determine whether or not to apply the Wisconsin hazardous waste regulations to that property. Where applicable, this letter will provide the LGU with an even stronger protection against long-term financial liabilities for the property when combined with the state's hazardous waste exemption (s. 292.24, Wis. Stats.) described above.

## **Federal Liability Protections**

### **CERCLA Liability Protections for Local Governments**

In addition to state law protections, there are liability protections for LGUs under the federal law known as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund. Unlike state law, under federal law, a school district is also considered an LGU.

CERCLA liability protections, discussed in further detail below, may be available to a local government when it:

- Acquires contaminated property involuntarily by virtue of its function as a sovereign, CERCLA § 101(20)(D);
- Qualifies as a bona fide prospective purchaser (BFPP) when it acquires the contaminated property, CERCLA §§ 101(40), 107(r)(1);
- Qualifies for a third party defense or innocent land owner liability protection, CERCLA §§ 107(b)(3), 101(35)(A); or
- Is conducting or has completed a cleanup of a contaminated property in compliance with a state cleanup program, CERCLA § 128(b) (Courtesy US EPA).

### **Involuntary Acquisition**

According to the Superfund law (CERCLA § 101(20)(D)), a "unit of state or local government which acquired ownership or control *involuntarily* through bankruptcy, tax delinquency, abandonment or other circumstances in which the government *involuntarily* acquires title by virtue of its function as a sovereign" is not considered to be an "owner" or "operator." It is not necessary for the municipality to be completely passive in order for the acquisition to be considered "involuntary" for purposes of CERCLA.

This exemption does not apply to a municipality that caused the spill. A municipality should exercise "due care" to ensure that it does not cause or contribute to an actual or potential release at a property that it has acquired involuntarily. See the EPA fact sheet on CERCLA Liability and Local Government Acquisitions and other Activities at

[www.epa.gov/oecaerth/resources/publications/cleanup/brownfields/local-gov-liab-acq-fs-rev.pdf](http://www.epa.gov/oecaerth/resources/publications/cleanup/brownfields/local-gov-liab-acq-fs-rev.pdf)

**Bona Fide Prospective Purchaser (BFPP)**  
BFPP certification provides a local government with CERCLA liability protection in the event that they knowingly purchase a property with environmental contamination. The following bullet points must be true in order for an LGU to meet BFPP certification:

- Property must be acquired after January 11, 2002;



- Purchaser must perform All Appropriate Inquiries (AAI) prior to the purchase of the property (must be completed within 180 days prior to acquisition)<sup>1</sup>;
- Contamination must have occurred before purchaser acquired property; and
- Purchaser has no “affiliation” with a liable or potentially liable party.

Additionally, once acquisition is complete, local governments must comply with the following continuing obligations in order to maintain BFPP status; including:

- Comply with land use restrictions;
- Take “reasonable steps” to prevent the release of hazardous substances;
- Provide full cooperation, assistance and access;
- Comply with information requests; and
- Provide legally-required notices.

For more information on Bona Fide Prospective Purchaser, please see the EPA website at: [www.epa.gov/occaerth/cleanup/revitalization/bfpp.html](http://www.epa.gov/occaerth/cleanup/revitalization/bfpp.html).

### **Third Party Defense or Innocent Landowner Defense**

Under Superfund, one private party often sues another to obtain money to assist with cleanup costs. This is known as a “third-party” lawsuit. A municipality that acquires property involuntarily, through the exercise of eminent domain by purchase or condemnation, or through direct purchase using the AAI process can be protected from “third-party” liability under CERCLA § 107(b)(3), if they meet certain minimum requirements. These requirements pertain to:

- The absence of any contractual relationship between the municipality and the causer;
- Showing that due care was exercised with respect to the contamination;

<sup>1</sup> AAI is defined by US EPA as “a process of evaluating a property’s environmental conditions and assessing the likelihood of any contamination.” The AAI Final Rule states that the standards set forth in the ASTM-E1527-05 Phase I Environmental Site Assessment Process satisfy the statutory requirements for all appropriate inquiries.

- Showing that the municipality took precautions against foreseeable acts or omissions, and the consequences thereof, by the third party that caused the contamination; and
- Meeting the specific criteria laid out in the applicable section of CERCLA that pertains to the innocent landowner defense being claimed.

A careful reading and study of CERCLA is necessary to assert and defend the third party liability defense effectively. Legal assistance is highly recommended.

### **Enforcement Bar**

Local governments are protected from EPA enforcement under Superfund while they are conducting, or after they have completed a response action in compliance with a state response program at brownfield sites. This protection is referred to as the “enforcement bar.” This is a protection provided by federal law.

### **One Cleanup MOA**

EPA and DNR entered into a Memorandum of Agreement (MOA), dated November 24, 2006, which clarifies EPA’s non-enforcement intentions at sites enrolled in Wisconsin’s voluntary cleanup program known as the Voluntary Party Liability Exemption (VPLE) Program. The MOA encourages the voluntary cleanup of brownfields without undue fear of EPA intervention.

### **CERCLA Liability and Federal Brownfields Grant Funding**

EPA brownfields grant funds cannot be used to pay response costs (i.e. the cost of cleanup activities) at a brownfield site for which the grantee is potentially liable under CERCLA § 107. Applicants for federal brownfield grant funds, including Wisconsin’s Ready for Reuse cleanup funding, must document that they qualify for one of the CERCLA liability protections listed above in order to be considered eligible for funding. The Department recommends that a local government contact the Department brownfields staff prior to acquiring a site to discuss the appropriate steps.

The DNR recommends that LGUs consider using property acquisition methods that will provide both state Spill Law and federal CERCLA liability protections when acquiring contaminated properties.

**Table # 1 – Liability Protection Summary**

The following table summarizes both state and federal liability protection incentives as discussed in this fact sheet.

	Methods of Property Acquisition									
	Tax Foreclosure	Bankruptcy Order	Escheat	Eminent Domain (slum or blight; condemnation)	Purchase	Inheritance or Bequest	Abandonment	Gift / Donation	Stewardship	From an eligible LGU
<ul style="list-style-type: none"> <li>• <i>Could apply to local governments</i></li> <li>○ <i>Could apply to local governments if state and federal law and requirements under both are followed</i></li> </ul>										
<b>Key CERCLA Provisions</b>										
<b>Involuntary Acquisition</b> § 101(20)(D)	•	•	•	○			•			○
<b>Bona Fide Prospective Purchaser</b> §§ 101(40) and 107(r)(1)	•	•	•	•	•	•	•	•	•	•
<b>Third Party and Innocent Landowner Defenses</b> §§107(b)(3) and 101(35)(A)			•	•	○	•				
<b>Enforcement Bar</b> § 128(b)	•	•	•	•	•	•	•	•	•	•
<b>Key Wisconsin Provisions</b>										
<b>Spill Law</b> § 292.11(9)(e)	•	•	•	•					•	•
<b>Solid Waste</b> § 292.23	○	○	○	○					○	○
<b>Hazardous Waste</b> § 292.24 and RCRA	○	○	○	○					○	○

**For More Information**

Information and frequently asked questions about liability protections for LGUs can be found at [dnr.wi.gov](http://dnr.wi.gov), search [LGU](#).

Questions about the Local Government Liability Exemption should be directed to the brownfield specialist in your local DNR regional office - [dnr.wi.gov/topic/Brownfields/Contact.html](http://dnr.wi.gov/topic/Brownfields/Contact.html)

This document contains information about certain state statutes and administrative rules but does not necessarily include all of the details found in the statutes and rules. Readers should consult the actual language of the statutes and rules to answer specific questions. The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240. This publication is available in alternative format upon request. Please call 608-267-3543 for more information.

