

March 12, 2013

Mr. Mark Lake, Principal
 Midland Commercial Development Corporation
 W228 N745 Westmound Drive
 Waukesha, Wisconsin 53186

Subject: Liability Clarification Letter for a Prospective Purchaser of Property Located at 129, 135, and 205 South Broadway, De Pere, Brown County, Wisconsin, Affected by Off-Site Contamination
 BRRTS Number 07-05-559894

Dear Mr. Lake:

Purpose of This Letter

The Department of Natural Resources (“the Department”) has reviewed the request that was submitted on your behalf by Attorney Don Gallo, Reinhart Boerner Van Deuren S.C. for a liability clarification letter in response to environmental contamination affecting the above named locations (hereinafter referred to as “the Property”) in the City of De Pere, Brown County, Wisconsin. Please refer to the attached Figures 1 and 2 for a site map of the Property, also referred to as the Proposed Walgreen Property. The purpose of this letter is to determine what provisions of the off-site exemption statute Midland Commercial Development Corporation (“Midland”) presently satisfies as a potential purchaser of the Property, and whether or not Midland would satisfy all the conditions of the off-site exemption in s. 292.13, Wis. Stats., upon taking title to the Property.

Property Descriptions

Parcel #	Location	BRRTS #
ED-825	129 S. Broadway	
ED-823	135 S. Broadway Former Royal Cleaners	02-05-513320
ED-833-1	Former Royal Cleaners Parking	~02-05-513320
A portion of the former Charles Street right of way	205 S. Broadway	~02-05-513320 ~03-05-000008
ED-814	Part of Former Silverado Speedy Stop	03-05-000008

Summary Determination

Based on the Department’s determinations in this letter, Midland Commercial Development Corporation, as the potential purchaser, will not be held responsible under the State’s Hazardous Substance Spill Law, s. 292.11, Wis. Stats., to investigate and clean up the petroleum-related hazardous substances migrating on to the Property if Midland takes title to the Property, as long as they continue to satisfy the statutory exemption conditions specified below.

Request

On January 10, 2013, Attorney Gallo requested on your behalf that the Department determine whether Midland would be held liable under the Hazardous Substance Spill Law, s. 292.11, Wis. Stats., for any hazardous substances in the soil and groundwater on the Property, if Midland acquires title to the Property. Midland believes the contaminants are migrating onto the Property from another property. In particular, you have requested clarification as to whether or not Midland is eligible for the “Off-site liability exemption” under s. 292.13, Wis. Stats. In addition, Attorney Gallo asked that the December 5, 2012 email from Alan Nass, WDNR Project Manager to Michelle Williams, Reinhart Boerner Van Deuren s.c. be included in this letter. That email is presented later in this letter.

The following documents were also submitted to the Department with the request:

- The off-site exemption Application Form dated January 8, 2013 and signed by Mark Lake.
- Phase 1 Environmental Site Assessment, Proposed Walgreen Store Location, Intersection of South Broadway Street and South Wisconsin Street, De Pere, Wisconsin, Arcadis U.S., Inc., December 2012.
- Unlabeled, partial copy of ALTA/ACSM Land Title Survey, RE: Proposed De Pere Walgreens, City of De Pere, Brown County, Wisconsin, Jahnke & Jahnke Associates, Inc. October 9, 2012.
- Unlabeled, partial copy of site figure showing footprint of the proposed Walgreen building.
- Unlabeled, partial copy of site figure showing proposed parking lot on east side of proposed Walgreen building.
- Unlabeled, partial copy of cross-section of storm and sanitary sewer locations in the former Charles Street Right-of-Way.
- Email from Alan Nass – DNR to Michelle Williams – Reinhart Boerner Van Deuren S.C., December 5, 2012.

The Department also received the fee for providing assistance, as required by s. NR 749.04(1), Wis. Adm. Code.

Background

The Department considered the documents listed above in making the determinations presented in this letter. The Department also reviewed its closed case files for the Former Royal Cleaners (BRRTS #02-05-513320) and the former Silverado Speedy Stop (#03-05-000008). The determinations state which provisions of the off-site exemption statute you presently satisfy for this Property, and whether or not, upon taking title to the Property, the conditions for the off-site exemption would be fully satisfied.

The off-site exemption in s. 292.13, Wis. Stats., limits the environmental liability of a person in possession, (i.e., who owns a property) or control of a property affected by the discharge of a hazardous substance, when the discharge originates from an off-site source. At the present time, you do not possess or control the Property, but it is the Department’s understanding that you intend to purchase the Property. Because you do not currently possess or own the Property, the Department cannot issue a written determination that all the

provisions in s. 292.13, Wis. Stats., have been satisfied. However, the Department does have the ability under s. 292.55, Wis. Stats., to clarify a person's present or future liability for the environmental pollution of a property.

Liability Determinations

Based upon the Department's review of the technical information, including the off-site application submitted in accordance with s. 292.13, Wis. Stats., the Department makes the following determinations under s. 292.55, Wis. Stats., regarding the hazardous substances (petroleum contamination) that are known to have impacted the soil and groundwater on part of the Property (parcel #ED-814 and former Charles Street Right-of-Way) and may have impacted the soil and groundwater on the other parcels (#ED-823, ED-825, and ED-833-1) that are also parcels of the Property:

1. The petroleum hazardous substance discharge(s) originated from a source on property that is not possessed or controlled by the applicant.
2. The applicant did not possess or control the petroleum hazardous substance on the property on which the discharge originated.
3. The applicant did not cause the discharge.
4. An investigation or other information has been submitted to the Department that is adequate to substantiate that the applicant has satisfied items 1 through 3 listed above. The petroleum contamination that originated on the south-central part of the former Silverado Speedy Stop property is known to have migrated into the soil and groundwater on those parts of the Property known as Parcel Number ED-814 and the former Charles Street Right-of-Way and may also have migrated onto Parcel Numbers ED-823, ED-825, and ED-833-1. A map of the Property parcel numbers is attached.
5. The Property owner is responsible for any discharges of hazardous substances whose source originates on the Property. In this case, the hazardous substances (chlorinated solvent contamination) present on parcel ED-823, parts of ED-833-1 (Closed Former Royal Cleaners), and possibly the former Charles Street Right-of-Way will be possessed and controlled by the applicant when the applicant purchases the Property. However, it is the Department's understanding that as part of the planned redevelopment, Midland intends to excavate and dispose of the contaminated soil on the Property.
6. The conditions for the off-site exemption would be fully satisfied for parcels ED-823 and ED-833-1 of the Property if petroleum contamination from an unknown, off-site source or the former Silverado Speedy Stop were detected on the Property.
7. Because there are no confirmed hazardous substances identified on parcel ED-825, the Department is not able at this time to make a determination that you qualify for all the provisions of the off-site liability exemption. However, if sampling on parcel ED-825 is conducted in the future that confirms petroleum contamination on the Property, and the conditions in s. 292.13, Stats, are followed, you will fully qualify for the off-site liability exemption.

Exemption Conditions for Owner of Affected Property

As future owner of the Property, you will need to comply with the conditions as specified in s. 292.13(1) and (1m), Wis. Stats., to ensure that the conditions of the exemption remain satisfied., including:

1. The facts upon which the Department based its determination must be accurate and will not change.
2. The Property owner must allow the following persons to enter the Property to take action to respond to the discharge (if needed): the Department, its contractors and its other authorized representatives; any

party that possessed or controlled the hazardous substance or caused the discharge; and any consultant or contractor of such a party

3. The Property owner must avoid any interference with actions undertaken to respond to the discharge and to avoid actions that worsen the discharge.
4. With respect to soil contamination only, the Property owner must take one or more specified actions directed by the Department, if the Department determines that the actions are necessary to prevent an imminent threat to human health, safety or welfare or to the environment, after the Department has made a reasonable attempt to notify the party who caused the hazardous substance discharge about that party's responsibilities to investigate and clean up the discharge.
5. The Property owner must agree to any other conditions that the Department determines are reasonable and necessary to ensure that the Department and the responsible party can adequately respond to the discharge.
6. Depending on the extent of contaminated soil removal from the Property in preparation for the Walgreen building, soil vapor mitigation related to the non-petroleum contamination may be required as per Numbers 1 through 4 of the DNR's December 5, 2012 email (attached).

Based on the Department's determinations in this letter, you will not be held responsible under the State's Hazardous Substance Spill Law, s. 292.11, Wis. Stats., to investigate and clean up the petroleum related hazardous substances migrating on to the Property if you take title to the Property, as long as you continue to satisfy the statutory exemption conditions specified above. These assurances are provided to you based on the information that is presently available to the Department. You should be aware that the Department may revoke the determinations made in this letter if the Department concludes that any of the requirements under s. 292.13(1) and (1m), Wis. Stats., cease to be met.

You should be aware that other future Property owners are eligible for the exemption under s. 292.13, Wis. Stats., if the new Property owner meets the requirements specified in the statute. However, the determinations in this letter may not be transferred or assigned by you to any other person. The Department will provide a written determination to other future owners of the Property documenting whether or not a new Property owner satisfies the off-site exemption conditions, if such a determination is requested. Other potential purchasers of the Property may also request a liability clarification letter from the Department, such as this one.


The Department tracks information on contaminated properties in a database that is available on the Internet at <http://dnr.wi.gov/topic/Brownfields/clean.html>. The Bureau for Remediation and Redevelopment Tracking System (BRRTS) identification number for this activity is included at the top of this letter. Click on "BRRTS on the web" to access information about this activity.

In addition to this liability clarification letter you received correspondence on December 5, 2012 email from Alan Nass, WDNR Project Manager to Michelle Williams, Reinhart Boerner Van Deuren s.c. with some technical guidance about your cleanup and development plans for the Property. This email is attached for your information.

It is the Department's hope that this letter has been helpful to you in clarifying the environmental liability under the State's Hazardous Substance Spill Law, associated with the contamination that has migrated onto the

Property. If you have any questions or concerns regarding this letter, please contact Alan Nass at 920-662-5161 or by email at alan.nass@wisconsin.gov.

Sincerely,



Roxanne N. Chronert
Team Supervisor
Northeast Region, Remediation and Redevelopment Program

Attachment: Figure 1 – Proposed Walgreen Property
Figure 2 – Existing Conditions - Proposed Walgreen
December 5, 2012 Email from Al Nass

Cc: Michelle Williams, Reinhart Boerner Van Deuren S.C., N16 W23250 Stone Ridge Drive, Suite One,
Waukesha, Wisconsin 53188
Annette Weissbach – NER (electronic)
Michael Prager – RR/5 (electronic)

ATTACHMENT

DECEMBER 5 EMAIL FROM AL NASS TO MICHELLE WILLIAMS, REINHART BOERNER VAN DEUREN

Hello Michelle [Williams] – I [Alan Nass] reviewed the Former Royal Cleaners (02-05-513320) and Silverado Speedy Stop (02-05-00008) files and discussed it with a member of the closure committee.

Our conclusions are that in our view, the best option for the proposed development would be to properly handle & dispose of any impacted soil that would need to be removed for the excavation of the proposed building's footings / utilities (I assume there would be no basement – correct?), install a soil vapor mitigation system under the building, and leave the rest of the contamination in-place under the building.

Our reasoning:

- 1) The installation of new utilities in Charles Street in early 2007 identified petroleum impacted soil from the Silverado site in the ROW. That contaminated soil was excavated from the utility trench pathways and disposed of at a landfill. Contaminated soil that was not disturbed was left in-place. So unless proven otherwise, we assume that contaminated soil still exists in parts of the former Charles Street ROW. There is no particular soil sample in the former ROW that we can point to that is in excess of a soil standard / RCL. However, we assume that contamination is still present and as such, the Department would require that a soil vapor mitigation system be installed under the proposed building as a preventative step. Such a system would be far less expensive than an option of excavating out all impacted soil from the former ROW & sampling to show it is clean. Another option would be to collect a number of soil samples to show there would be no soil vapor issues created from this contamination.*
- 2) The PCE soil contamination (above the water table) that is present on the former Royal Cleaners site is at SB-1 (2-4') and at MW-3 (7-9'). The area surrounding these two borings is what the cap maintenance plan and deed restriction apply to. The water table at this point is about 9 to 9.5'. So if your client would want to get rid of the deed restriction, excavation would be in this area would need to go down to at least 9' or the water table (whichever is deeper) and sampling would be needed to show that no contamination remains that is above a standard / RCL. While excavation is an option, it would be expensive and unnecessary. If removal of the contaminated soil were not done, the Department would require that a soil vapor mitigation system be installed under the proposed building as a preventative step.*
- 3) The area of MW-1, SB-2, PZ-1, B1300, and MW1700 was not included in the deed restriction for the former Royal Cleaners. Contamination above the Soil to GW pathway RCL was noted in a soil sample at PZ-1, however, this point was not included in the deed restriction (don't know why). If your client wanted to excavate this area, they could, but again they would need to go down to the 9 feet / water table (whichever is deeper) and sample what remains. If no excavation was done in this area and if this were the only area of contamination, the Department would highly recommend the installation of a vapor mitigation system under the proposed new building as a precautionary measure.*
- 4) There was no deed restriction for the remaining contamination at Silverado. However, contaminated soil and groundwater remains. From Number 1 above, we assume that soil contamination*

remains in the Former Charles Street ROW so it is logical that such also remains on what was the former Silverado site. So if your client wanted to remove such contaminated soil, they would need to do so down to the water table, sample to show it is clean, and do this up to the property line (not just the building footprint). Then, they would need to install monitoring wells and monitor to show that groundwater no longer has any ES exceedances. If no soil removal were done, the Department would require the installation of a soil vapor mitigation system under the building as a preventative step.

5) The Royal Cleaners and Silverado sites will always remain on the GIS Registry and the Royal Cleaners deed will always show the restriction is there / was there (even if negated). The Royal GIS Registry could be updated to show the deed restriction is no longer applicable, but the original information talking about the deed restriction would still be there.

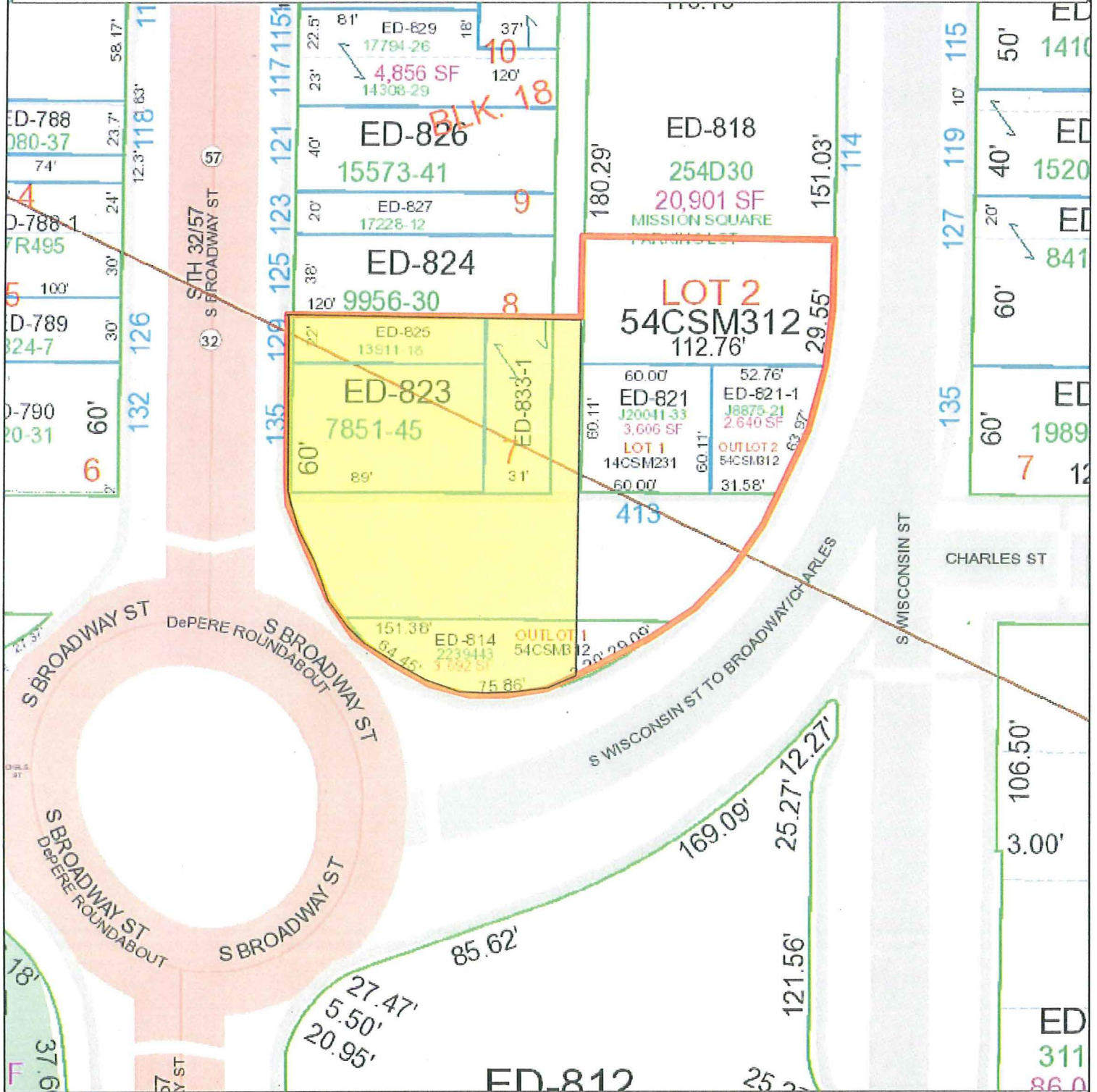
You could get an off-site letter (GLC letter) for that part of the site that was formerly the Silverado property. The fee would be \$500. This option would not be available for the former Royal Cleaners property as such is included in the proposed new site.

Could you provide the Department with a copy of the Phase 1?

I assume you will have questions, please contact me. Thank you.

Figure 1 - Proposed Walgreen Property

Red = Property Line, Yellow = Liability Clarification Letter



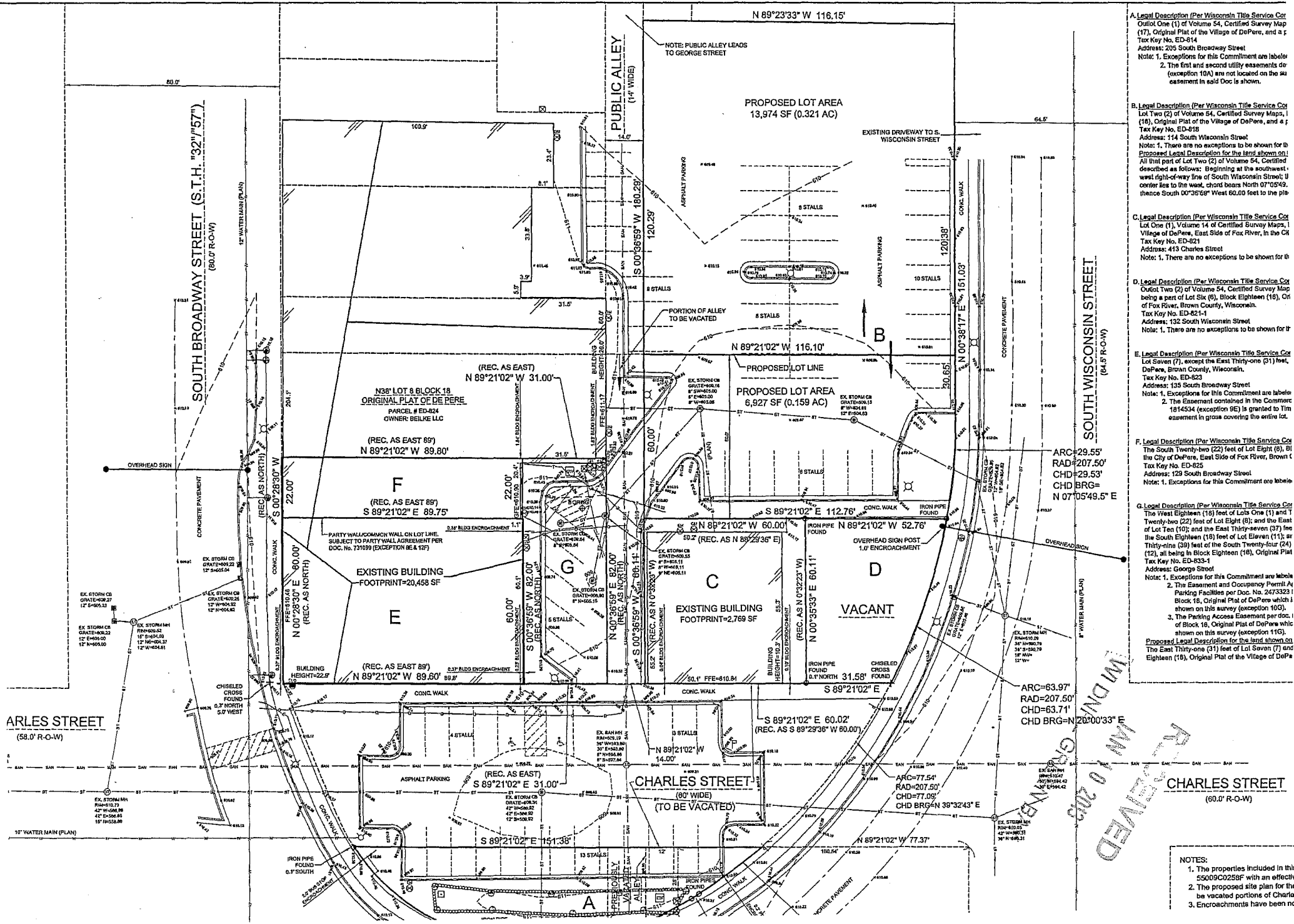
Map provided by the Brown County Planning & Land Services Department - Land Information Office (LIO)

A map key (legend) and other information about this map is available at: maps.gis.co.brown.wi.us

This map is intended for advisory purposes only. It is based on sources believed to be reliable, but Brown County distributes this information on an "As Is" basis. No warranties are implied. Boundaries shown on this map are general representations only and should not be used for legal documentation, boundary survey determinations, or other property boundary issues.

03/12/2013
Scale 1:720

Figure 2 - Existing Conditions - Proposed Walgreen



- A. Legal Description (Per Wisconsin Title Service Co)**
 Outlot One (1) of Volume 54, Certified Survey Map (17), Original Plat of the Village of DePere, and a f Tax Key No. ED-814
 Address: 205 South Broadway Street
 Note: 1. Exceptions for this Commitment are labeled 2. The first and second utility easements do (exception 10A) are not located on the su easement in said Doc is shown.
- B. Legal Description (Per Wisconsin Title Service Co)**
 Lot Two (2) of Volume 54, Certified Survey Maps, (16), Original Plat of the Village of DePere, and a f Tax Key No. ED-818
 Address: 114 South Wisconsin Street
 Note: 1. There are no exceptions to be shown for th Proposed Legal Description for the land shown on! All that part of Lot Two (2) of Volume 54, Certified described as follows: Beginning at the southwest- west right-of-way line of South Wisconsin Street; U center line to the west, about bears North 07°05'49. thence South 00°35'58" West 60.00 feet to the pla
- C. Legal Description (Per Wisconsin Title Service Co)**
 Lot One (1), Volume 14 of Certified Survey Maps, 1 Village of DePere, East Side of Fox River, in the Ct Tax Key No. ED-821
 Address: 413 Charles Street
 Note: 1. There are no exceptions to be shown for th
- D. Legal Description (Per Wisconsin Title Service Co)**
 Outlot Two (2) of Volume 54, Certified Survey Map being a part of Lot Six (6), Block Eighteen (18), Of Fox River, Brown County, Wisconsin.
 Tax Key No. ED-821-1
 Address: 132 South Wisconsin Street
 Note: 1. There are no exceptions to be shown for th
- E. Legal Description (Per Wisconsin Title Service Co)**
 Lot Seven (7), except the East Thirty-one (31) feet, DePere, Brown County, Wisconsin.
 Tax Key No. ED-823
 Address: 135 South Broadway Street
 Note: 1. Exceptions for this Commitment are labeled 2. The Easement contained in the Commor 1814534 (exception 9E) is granted to Tim easement in gross covering the entire lot.
- F. Legal Description (Per Wisconsin Title Service Co)**
 The South Twenty-two (22) feet of Lot Eight (8), Bl the City of DePere, East Side of Fox River, Brown t Tax Key No. ED-825
 Address: 129 South Broadway Street
 Note: 1. Exceptions for this Commitment are label
- G. Legal Description (Per Wisconsin Title Service Co)**
 The West Eighteen (18) feet of Lots One (1) and T Twenty-two (22) feet of Lot Eight (8); and the T Lot Ten (10); and the East Thirty-seven (37) fee the South Eighteen (18) feet of Lot Eleven (11); ar Thirty-nine (39) feet of the South Twenty-four (24) (22), all being in Block Eighteen (18), Original Plat Tax Key No. ED-833-1
 Address: George Street
 Note: 1. Exceptions for this Commitment are label 2. The Easement and Occupancy Permit A Parking Facilities per Doc. No. 2473323 i Block 18, Original Plat of DePere which i shown on this survey (exception 10G). 3. The Parking Access Easement per doc. 1 of Block 18, Original Plat of DePere whic shown on this survey (exception 11G).
 Proposed Legal Description for the land shown on The East Thirty-one (31) feet of Lot Seven (7) and Eighteen (18), Original Plat of the Village of DePe

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- NOTES:**
1. The properties included in this 5509C0258F with an effectivity
 2. The proposed site plan for the be vacated portions of Charle
 3. Encroachments have been no