

From: Beggs, Tauren R - DNR
Sent: Wednesday, September 27, 2023 1:02 PM
To: Elizabeth Runge
Cc: Prager, Michael A - DNR; Thistle, Jodie M - DNR
Subject: LGU Liability Clarification Letter for City of Two Rivers, BRRTS # 07-36-593045
Attachments: 20230926_651_GLC_Ltr_LGU.pdf

Good afternoon Elizabeth,

Attached is the Local Governmental Unit (LGU) Liability Clarification Letter for the City of Two Rivers regarding the planned acquisition of a portion of the property located at 1621 14th Street in Two Rivers for blight elimination purposes.

If you have any questions, please feel free to contact me.

Regards,

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Tauren R. Beggs

Hydrogeologist & Northeast Region Land Recycling Expert

Remediation and Redevelopment Program

Wisconsin Department of Natural Resources

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Green Bay, WI 54313

Phone: (920) 510-3472

Tauren.Beggs@wisconsin.gov (preferred contact method during work at home)

dnr.wi.gov



September 26, 2023

Elizabeth Runge
City of Two Rivers
1717 East Park Street
Two Rivers, WI 54241
Email: erunge@two-rivers.org

Subject: Local Governmental Unit (LGU) Liability Clarification Letter
City of Two Rivers, 1621 14th Street (formerly 1702 13th St), Two Rivers, Wisconsin
BRRTS Activity Name: City of Two Rivers
BRRTS # 07-36-593045

Dear Ms. Runge:

The Wisconsin Department of Natural Resources (DNR) received a request for a liability clarification letter you submitted on behalf of the city of Two Rivers on September 18, 2023 (Request). The Request was submitted with the appropriate review fee under Wisconsin Administrative (Wis. Admin.) Code § NR 749.04(1).

It is the DNR's understanding, based on the documents submitted, that the city of Two Rivers intends to acquire a portion of the property identified above that is depicted on the attached Sketch Map, dated July 26, 2023 (the Property). The purpose of this letter is to provide the city of Two Rivers with clarification of environmental liabilities associated with the Property. Wisconsin Statute (Wis. Stat.) § 292.55(1)(d) 4. authorizes the DNR to issue a letter to a person seeking assistance concerning the liability for environmental pollution at a property. The DNR based this letter on review of environmental reports and other documents that were provided in the Request:

- Liability clarification letter request, completed Form 4400-237, signed September 12, 2023, with a cover letter from Elizabeth Runge dated September 13, 2023.
- Resolution For Approving the Project Plan for Tax Incremental District 17, City of Two Rivers, adopted on September 6, 2022.
- Resolution For Creating Tax Incremental District 17, City of Two Rivers, adopted on September 6, 2022.
- Planning Commission, Resolution For Approving the Project Plan and Boundaries for Tax Incremental District 17, City of Two Rivers, adopted on August 8, 2022.
- DNR Site File "Bright Horizon Properties, LLC (Former)" with Reports and DNR review letters, BRRTS # 02-36-589295.

The city of Two Rivers' application requests a determination from the DNR on whether the city of Two Rivers is eligible for the local government unit (LGU) liability exemption identified in Wis. Stat. § 292.11(9)(e), with respect to the Property.

PROPERTY USE

The Property is currently owned by West River Lofts LLC and is part of a larger parent tract of land totaling 3.15 acres, as shown on Exhibit 4, Manitowoc County Parcel Viewer, dated July 7, 2023, and referenced as the East Property on the attached map, Overall Ste Plan, dated October 20, 2021 (the parent tract of land is herein referred to as the East Property). The developer is planning to construct a 54-unit multi-family residential development on the

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East Property. The city of Two Rivers is considering acquiring 0.49-acres of the southeastern portion of the East Property to have land access adjacent to the railroad trestle bridge within the West Twin River (herein referred to as the CN Trestle Bridge), which the city of Two Rivers plans to purchase in the future from Canadian National (CN) as part of a larger railroad line acquisition).

BACKGROUND AND ENVIRONMENTAL SUMMARY

The East Property was formerly used for manufacturing purposes since prior to 1885 with a large manufacturing building across the majority of the East Property and railroad spurs in the southeastern portion of the East Property that were used in historical facility operations. The two main historical manufacturing occupants were Eggers Industries, Inc. and Aluminum Goods Manufacturing Company Plant No. 4 (subsequently known as Mirro Aluminum Company and Newell Operating Company). Phase I and II Environmental Site Assessments (ESAs) were completed in November 2021 and resulted in identification of *recognized environmental conditions* and associated contamination. Site investigation activities have taken place throughout 2022 and 2023 to define the nature, degree, and extent of volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs), Resource Conservation and Recovery Act (RCRA) metals and polychlorinated biphenyls (PCBs) detected above soil and/or groundwater standards and to prepare the East Property for redevelopment. Contaminated materials management, remedial action (primarily excavation and landfill disposal of contaminated soil and capping), and a vapor investigation are planned as part of the East Property redevelopment. The DNR provided a Remedial Action and Materials Management Plan (RAP/MMP) approval letter on June 29, 2023, and a Technical Assistance Response letter for the Sub-slab Vapor Mitigation System Design, Vapor Port Design, and Vapor Sampling on July 14, 2023, for the East Property redevelopment. The RAP/MMP approval letter includes clarification from the DNR that additional site investigation is still needed to completely define the nature, degree, and extent of contamination.

The 0.49-acre Property (portion of the East Property) that the city of Two Rivers is planning to acquire was formerly improved with railroad spurs, fuel oil underground storage tanks (USTs), an oil house, and warehouse. It currently consists of greenspace and pavement. VOC, PAH, RCRA metal and PCB contamination was also identified in soil and/or groundwater on this portion of the East Property.

METHOD AND PURPOSE OF ACQUISITION

The city of Two Rivers is planning to purchase the Property from the current owner and developer, West River Lofts, LLC, and the city is negotiating the final terms of a development agreement. The Property and East Property are located within Tax Incremental District (TID) #17. The city submitted copies of several documents in the Request that demonstrate that the creation of the TID and the TID project plan was created for blight elimination and that the entire project area in the TID is a blighted area as defined in Wis. Stat. § 66.1105(2)(ae)1. The Project Plan approved by the city included an option for expenditures related to the CN Trestle Bridge that is adjacent to the TID area including costs for acquisition.

LOCAL GOVERNMENT LIABILITY EXEMPTION

Under Wis. Stat. § 292.11, a person who “possesses, controls or causes” a hazardous substance discharge is liable for taking necessary investigative and cleanup actions.

Wis. Stat. § 292.11(9)(e) exempts a local government unit (LGU) that meets applicable criteria from the following responsibilities of owners of property with a hazardous substance discharge:

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- The responsibility to take actions necessary to restore the environment and minimize harmful effects of hazardous substance discharges to soil, sediment, groundwater, surface waters and air of the state.
- The responsibility to comply with DNR orders to take action to prevent hazardous substance discharges.
- The responsibility to reimburse the DNR for actual and necessary expenses incurred to identify, locate, monitor, contain, remove, or dispose of a hazardous substance discharge and to take other emergency actions deemed appropriate under the circumstances.

The primary practical impact of an exemption from these legal responsibilities is that an exempt LGU is not required to complete a Wis. Admin. Code. ch. NR 716 site investigation or a remedial response action. However, an exempt LGU may voluntarily do so.

Wis. Stat. § 292.11(9)(e)2.a. provides that the exemption does not apply to hazardous substance discharges caused by, or actions taken by, the LGU. Activities occurring before or after acquisition (for example, demolition and soil disturbing activities) on a property with a hazardous substance discharge have the potential to make a pre-existing discharge worse. These activities should be discussed with the DNR before they occur, to avoid causing a hazardous substance discharge for which the LGU would be responsible.

Wis. Stat. §§ 292.11(9)(e)2.b.-d. also state that an LGU will not be exempt from legal responsibility for any hazardous substance discharge caused by the following LGU actions or inactions:

- A failure to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.
- A failure to sample and analyze unidentified substances in containers stored aboveground on the property.
- A failure to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

The LGU exemption is only available to local units of government as defined in Wis. Stat. § 292.11(9)(e)1. This liability exemption is not transferrable from the exempt LGU to future property owners, except to other eligible LGUs. Nonexempt LGU owners and responsible parties are subject to full environmental responsibility and regulation by, at a minimum, Wis. Stat. ch. 292 and Wis. Admin. Code chs. NR 700-799.

Wis. Stat. § 292.23 authorizes an LGU exemption from certain solid waste management requirements for pre-existing unlicensed solid waste disposal sites. The above-mentioned conditions and limitations of the Wis. Stat. § 292.11(9)(e) LGU exemption apply to the LGU exemption for solid waste, along with other conditions and limitations that are specific to this exemption. Wis. Stat. § 292.23 should be reviewed and DNR consulted if any unlicensed solid waste disposal areas exist on the Property.

DETERMINATIONS

Based on the information provided by the city of Two Rivers and reviewed by the DNR, the DNR determined that the city of Two Rivers qualifies for an LGU exemption under Wis. Stat. § 292.11(9)(e), for the following reasons:

- The city of Two Rivers meets the definition of a “local governmental unit” as described in Wis. Stat. § 292.11(9)(e)1. for purposes of qualifying for the LGU exemption.
- If the city of Two Rivers acquires the Property, the DNR determines that the city will obtain the Wis. Stat. § 292.11(9)(e) local governmental unit liability exemption because the Property is being acquired for the purpose of blight elimination which is one of the property acquisition methods listed in Wis. Stat. § 292.11(9)(e)1m. that makes an LGU eligible for the LGU environmental liability exemption.

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Ongoing, Non-Exempt Responsibilities of a Local Governmental Unit

Wis. Admin. Code Ch. NR 706 Notification: Neither Wis. Stat. § 292.11(9)(e)1m. nor Wis. Stat. § 292.23 exempt an LGU from the hazardous substance discharge notification requirements set forth in Wis. Stat. § 292.11(2). Therefore, all LGUs must notify the DNR immediately of any known, discovered discharge of a hazardous substance to the environment at the Property. See DNR publication *Immediate Reporting Required for Hazardous Substance Spills* (RR-560), for additional information about spill and discharge reporting (available at dnr.wi.gov; search “RR-560”).

Demolition: Before beginning any demolition work at the Property, a pre-inspection is required, along with filing of DNR Form 4500-113, Notification for Demolition. See DNR publication *Planning Your Demolition or Renovation Project: A Guide to Hazard Evaluation, Recycling and Waste Disposal* (WA-651), available at dnr.wi.gov (search “WA-651”) for additional information about demolition activities. Storm water management permits may also be necessary for demolition and construction activities. All LGUs must comply with these requirements.

Federal and State UST Regulations: The LGU exemption set forth in Wis. Stat. § 292.11(9)(e) does not exempt an LGU from complying with state and federal laws regulating underground storage tanks, including Wis. Admin. Code ch. ATCP 93. If you have questions about underground storage tank requirements, contact the Wisconsin Department of Agriculture, Trade and Consumer Protection (the Bureau of Weights and Measures) directly. Wisconsin Admin. Code ch. ATCP 93 is available at https://docs.legis.wisconsin.gov/code/admin_code/atcp/090/93.

Use of the Property

If the city of Two Rivers intends to use or redevelop the Property during or after cleanup activities have occurred, or the Property will remain in its current state and be accessible to the public (with or without access permission), the city of Two Rivers should discuss proposed property uses and improvements with the DNR prior to taking any actions. Wis. Stat. § 292.11(9)(e)4. requires exempt LGUs to take actions the DNR determines are necessary to reduce to acceptable levels any substantial threat to public health or safety when the Property is developed or put into its intended use to maintain the LGU exemption.

For example, if soil is excavated at the Property, the city of Two Rivers must determine whether the material is classified as a solid or hazardous waste and ensure that any storage, treatment, or disposal is in compliance with applicable state laws. The city of Two Rivers must also comply with long-term continuing obligations, if applicable, associated with closed environmental case(s) at the Property.

In addition, leaving the Property open to possible public use, even if not authorized, may require some action to both prevent public contact with environmental contaminants and maintain the exemption.

It is especially important to consult with the DNR before and during any demolition, excavation, and/or other development work on the Property. The LGU exemption can be lost if significant public health or safety threats exist as a result of the use. Wis. Admin. Code § NR 708.17 describes types of protective actions that DNR may request when a new use is planned for a property owned by an LGU with the exemption.

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Federal Liability Protections

In addition to state liability protections, an LGU may also be eligible for the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) liability protection in certain situations. To determine what specific actions would satisfy the federal liability requirements under CERCLA, contact either Thomas Krueger at (312) 886-0562 or krueger.thomas@epa.gov, or Larry Kyte at (312) 886-4245 or kyte.larry@epa.gov at the U.S. Environmental Protection Agency (U.S. EPA). The mailing address is U.S. EPA REGION 5, Office of Regional Counsel (C-14J), 77 W. Jackson Blvd., Chicago, IL 60604-3590. The U.S. EPA may be able to provide you with guidance on whether your current and proposed actions concerning the Property are consistent with federal CERCLA liability exemption conditions.

This Letter is Based on Information Provided to DNR

Any determinations made by the DNR in this letter are based specifically on the information made available to the DNR as part of the Request and are subject to change if other information arises. If new or more extensive contamination is discovered at the Property, the LGU is required to notify the DNR in accordance with Wis. Stat. § 292.11(2). The LGU exemption from environmental liability under Wis. Stat. § 292.11(9)(e) is not transferable from the LGU to future owners of the Property or to other responsible parties, other than to another eligible LGU.

CLOSING

This letter, site and case-related information, and DNR contacts can be found online in the Bureau for Remediation and Redevelopment Tracking System (BRRTS) on the Web. Go to dnr.wi.gov and search “BOTW.” Use the BRRTS ID # found at the top of this letter. The site can also be found on the Remediation and Redevelopment Sites Map by searching “RRSM.”

If you have any questions about the letter or the LGU exemption and other local government cleanup tools, contact Michael Prager at (608) 225-7950 or Michael.Prager@wisconsin.gov. For questions related to environmental conditions and requirements at the Property, contact Tauren Beggs, at (920) 510-3472 or Tauren.Beggs@wisconsin.gov.

Sincerely,



Jodie Thistle
Chief, Brownfields, Outreach, and Policy Section
Remediation and Redevelopment Program

Attachments:

- Sketch Map, dated July 26, 2023
- Exhibit 4, Manitowoc County Parcel Viewer, dated July 7, 2023
- Overall Site Plan, dated October 20, 2021

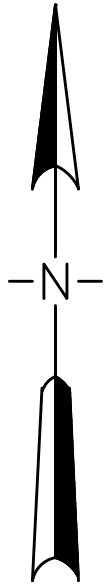
cc: Michael Prager, DNR, Remediation and Redevelopment Program - Michael.Prager@wisconsin.gov
Tauren Beggs, DNR, Remediation and Redevelopment Program – Tauren.Beggs@wisconsin.gov

CITY OF TWO RIVERS

PART OF LOT 2, CSM, VOLUME 35, PAGES 307-310
CITY OF TWO RIVERS, MANITOWOC COUNTY, WISCONSIN

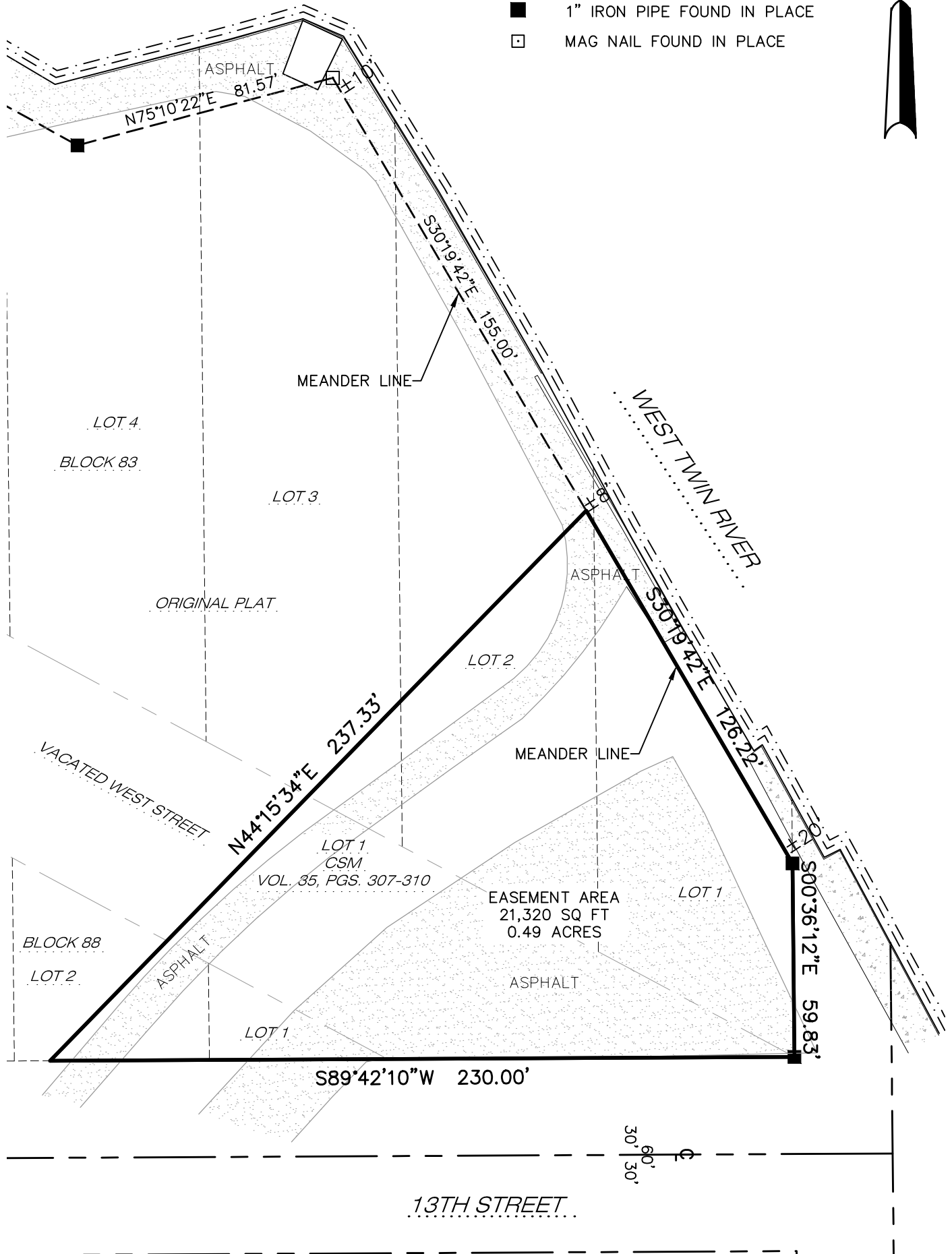


NORTH POINT REFERENCED TO THE W. LINE OF THE NW 1/4 OF SECTION 1-19-24 RECORDED AS N00°48'17"W PER MANITOWOC COUNTY COORDINATE SYSTEM.

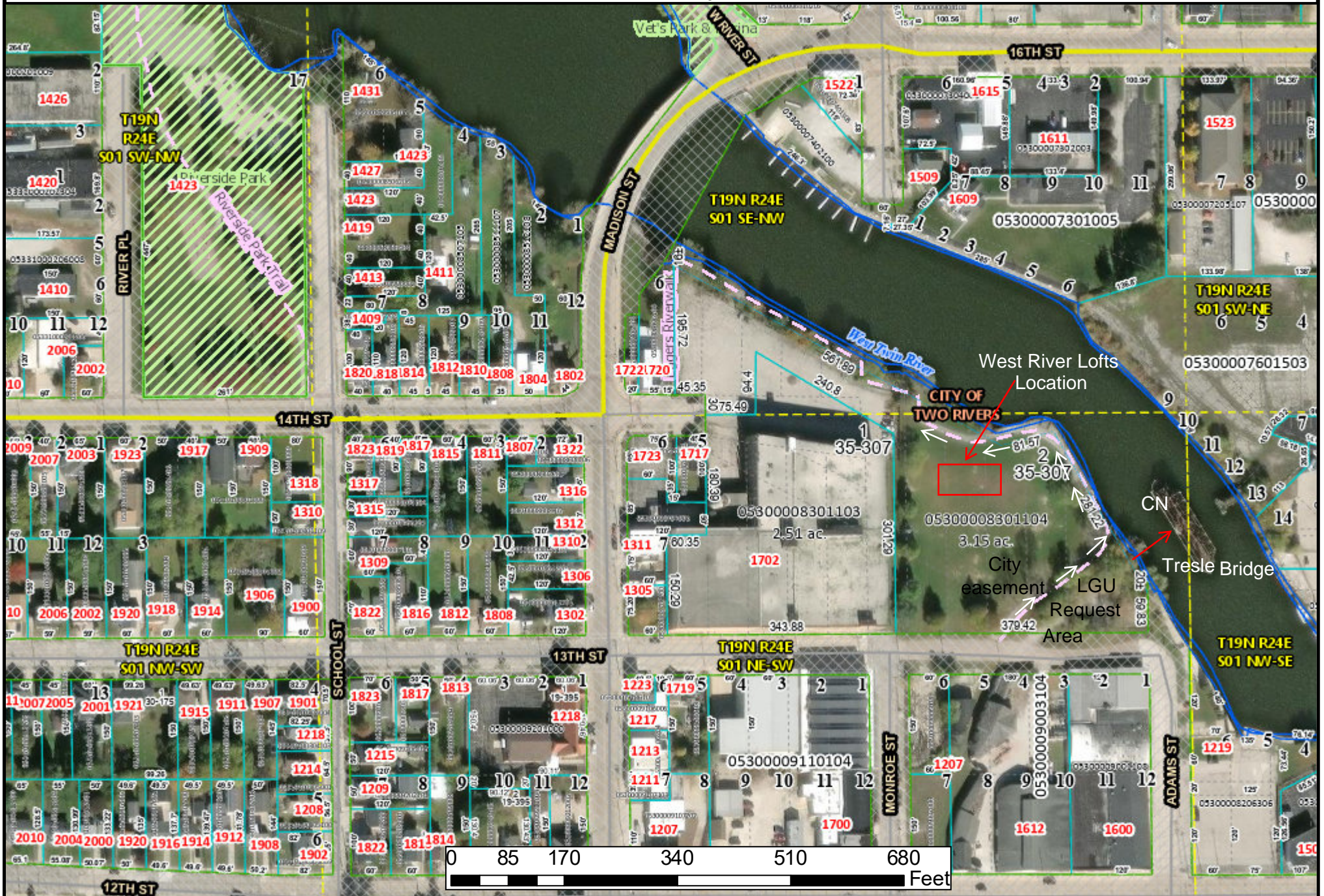


LEGEND

- 1" IRON PIPE FOUND IN PLACE
- MAG NAIL FOUND IN PLACE

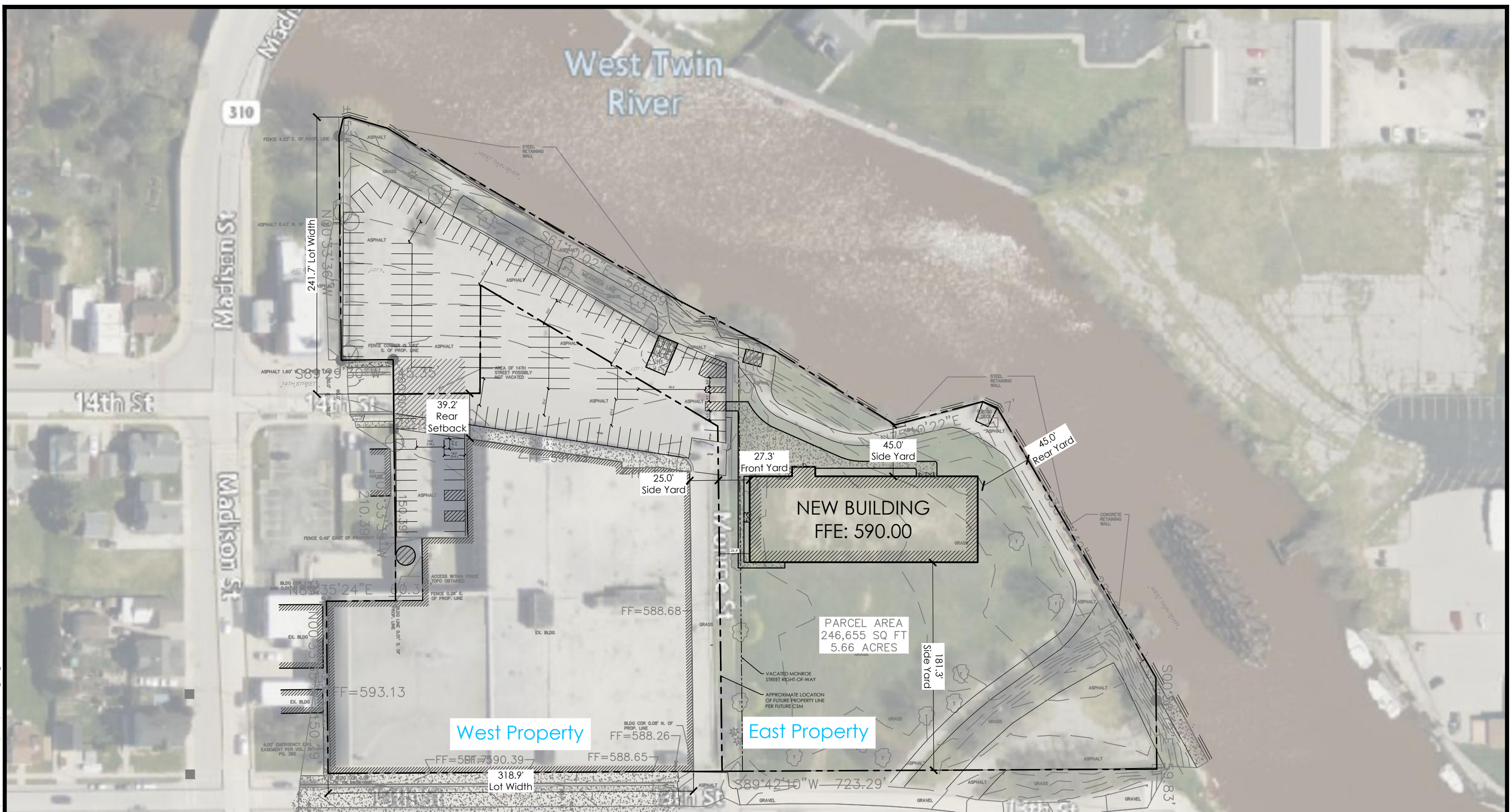


Manitowoc County Parcel Viewer



10/20/2021

P:\2019-CONTRACTS\2019-35 Two Rivers Apartments\Phase - 2\Construction Documents\3.3 Site\2019-35 Design.dwg



10/20/2021
TWO RIVERS APARTMENTS
 Two Rivers, WI Proj. No. 2019-35

OVERALL SITE PLAN
 SCALE: 1"=80'



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