

## Report to the Manitowoc Plan Commission

**Meeting Date:** January 25, 2023

**Request:** PC 4-2023: EastPoint Land Development / Howe; Request for a Conditional Use Permit for the Creation of a Planned Unit Development (PUD) pursuant to 15.750 of the Municipal Code.

**Existing Land Use for Subject Property:** Vacant, Former Memorial Hospital Location

**Existing Zoning for Subject Property:** B-1 Office - Residential

### Surrounding Property Land Uses and Zoning

Direction	Existing Land Use	Existing Zoning
North	Residential	R-4 Single and Two Family Residential
East, South	Park / Conservancy (Lincoln Park)	P-1 Conservancy
West	Institutional, Office	B-1 Office - Residential

### Consistency Analysis

While a Conditional Use is not required to be consistent with the Comprehensive Plan, in this instance the requested use would be consistent with the land use with adjacent land uses.

**Report:** Eastpoint Land Development LLC (Eastpoint) is requesting a Conditional Use Permit for the creation of Planned Unit Development.

Pursuant to Municipal Code 15.750(4) the establishment of a PUD requires the issuance of a conditional use permit and the predominant land use in a PUD shall be a permitted use or conditional use permitted in the underlying zoning district. Eastpoint is proposing to create a 34 lot residential subdivision on the former Memorial Hospital site; 33 of the lots are for residential development and the 34<sup>th</sup> lot is an outlot that the private drives will be located on. The proposed residential use is a permitted use in the current B-1 Office – Residential zoning district.

The main reason Eastpoint is creating the PUD document is to gain some flexibility with setbacks off of the property lines. Eastpoint wants the ability, if needed, to reduce the side yard setbacks to 3' instead of 6' but in no instance will there be less than 12' of separation between structures. The PUD will also detail the front yard setbacks from the private drives. The front yard setbacks will range from 18' to 22' off of the private drive. The developer has stated that only single family residences will be constructed in the development.

All drives and utilities within the PUD area will be installed by the developer. A Home Owner's Association will be created and all future maintenance of the drives and utilities will be paid for by the HOA.

Per the PUD, lot sizes in the development shall be a minimum of 7,000 s.f., with a minimum of 65 feet of frontage on the private drives. For comparison, minimum lot sizes in the R-4 Single and Two Family Residential district is 5,500 s.f. for single family uses. The smallest lot in the development is 7,369 s.f. and largest lot is 11,540 s.f.. For comparison, the residential lots sizes across Reed Avenue range from 7,400 s.f. to 10,454 s.f..

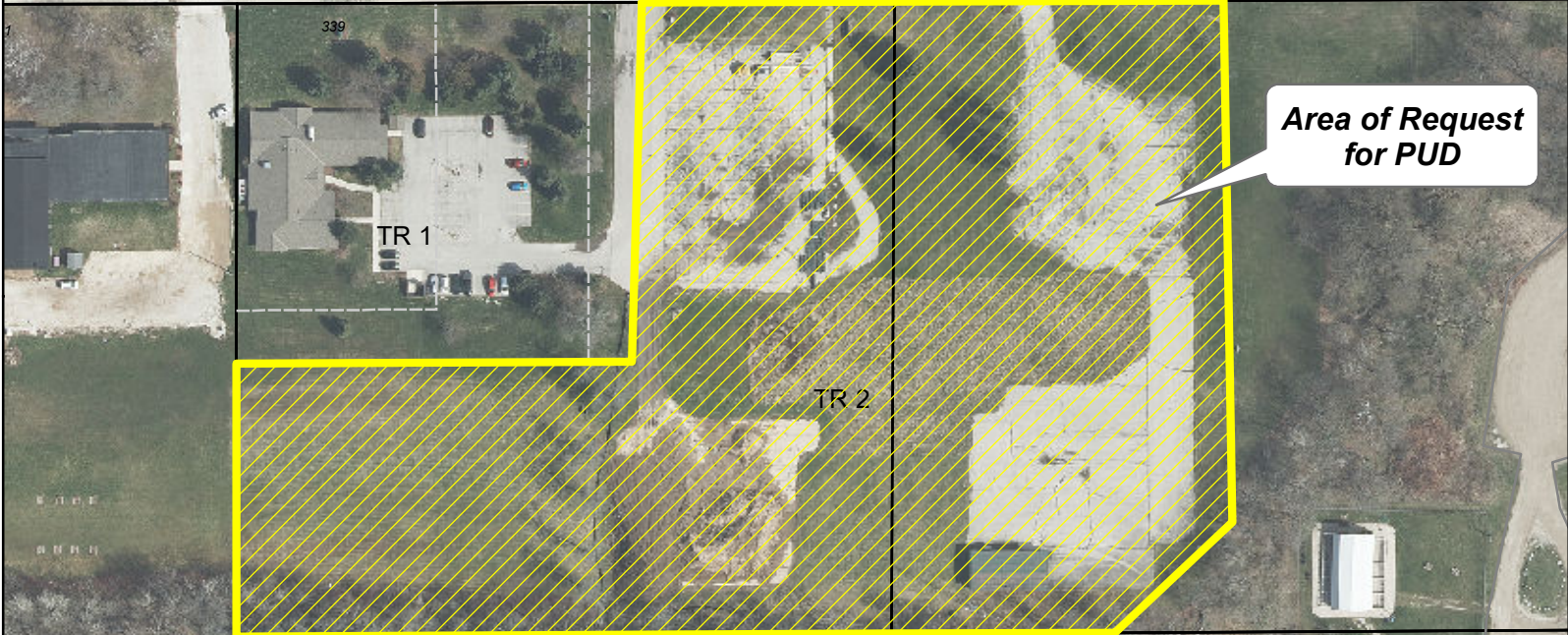
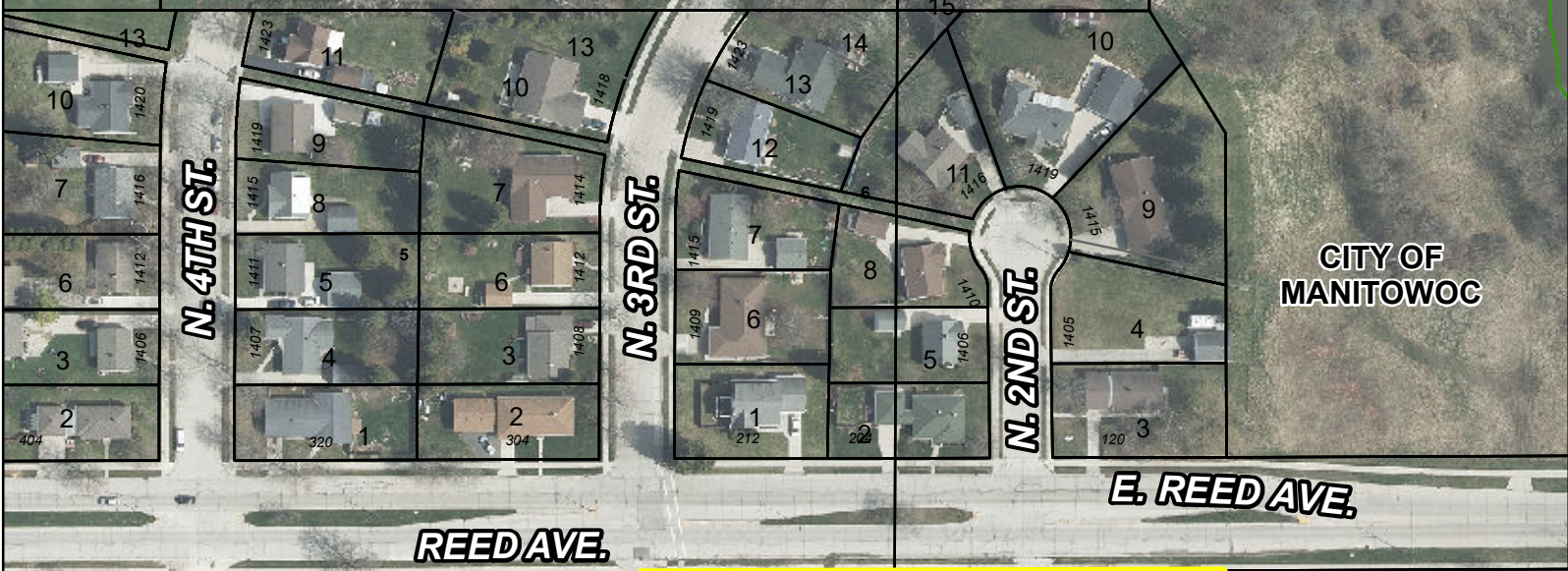
The preliminary plat review for the subdivision is being reviewed by staff currently and will also be reviewed later at the Plan Commission meeting.

Public Comments: Notices were mailed out on January 18th to abutting and adjacent property owners excluding right-of-way, and as of the date of this writing no comments have been received.

Timeline

- January 25 Plan Commission Meeting
- February 20 Common Council Public Hearing.

**Recommendation:** Approve the Conditional Use Permit creating the Planned Unit Development for The Preserve at Lincoln Park.

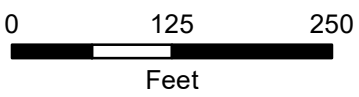


# Request for Conditional Use Permit (CUP) & Planned Unit Development (PUD)


PC 04-2023

The Preserve at Lincoln Park PUD

DISCLAIMER: Maps and associated data are believed to be accurate, but are not warranted. This information is not intended for legal, survey, or other related uses. Please obtain the original recorded documents for legal or survey information.

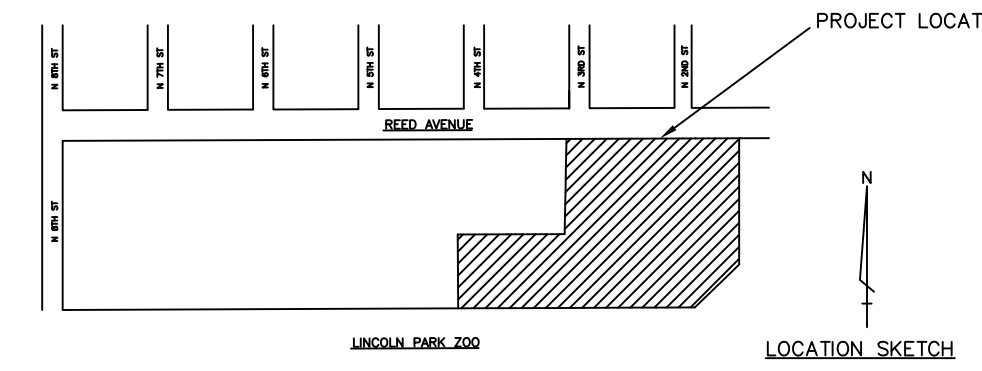
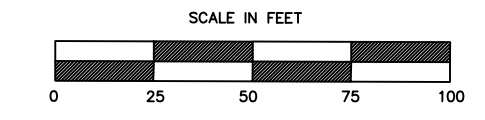
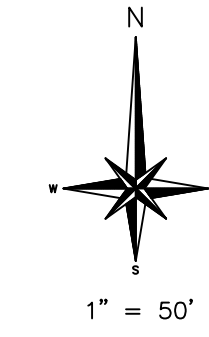


**Legend**

 Area of Request for PUD

THE PRESERVE AT LINCOLN PARK  
A PLANNED UNIT DEVELOPMENT

LOT 2 OF A CERTIFIED SURVEY MAP RECORDED IN VOLUME 31 ON PAGE 227 PLUS ADDITIONAL LAND, BEING PART OF LOT 4 OF THE SUBDIVISION OF THE SW 1/4 AND THE SE 1/4 OF SECTION 17, TOWN 19 NORTH, RANGE 24 EAST, CITY OF MANITOWOC, MANITOWOC COUNTY, WISCONSIN



NOTE: ALL MEASUREMENTS HAVE BEEN MADE TO HUNDREDTHS OF A FOOT  
ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE WISCONSIN COORDINATE REFERENCE SYSTEM (PER THE COUNTY PUBLISHED SECTION SUMMARY)

SETBACK WIDTH SHOWN ON PLAT  
● - 1" X 18" IRON PIPE SET WEIGHING 1.13 LBS./FT  
○ - IRON PIPE OR ROD FOUND

NOTES

The property owners, at the time of construction, shall implement the appropriate soil erosion control methods outlined in the Wisconsin Construction Site Erosion and Sediment Control Technical Standards (available from the Wisconsin Department of Natural Resources) to prevent soil erosion. However, if at the time of construction the City has adopted a soil erosion control ordinance, it shall govern over this requirement. This provision applies to any grading, construction, or installation-related activities.

NOTES

The County Monuments used in this survey are shown and their ties have been found and verified and/or Manitowoc County Planning and Land Services has been notified of any discrepancies.

Home Owners Association

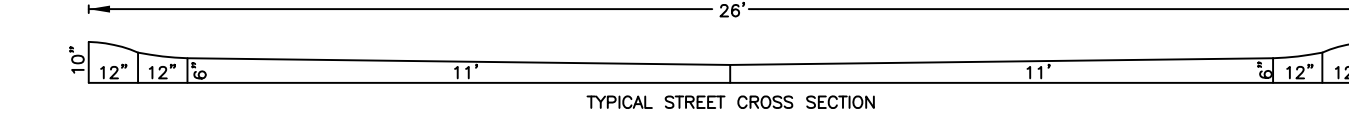
There is a Home Owners Association associated with this plat recorded via a separate instrument.

Home Owners Association

There is a Home Owners Association associated with this plat recorded via a separate instrument.

CURVE DATA

Table with 5 columns: CURVE, RADIUS, ARC LENGTH, CHORD LENGTH, CHORD BEARING, DELTA ANGLE. It lists data for curves C1 through C12.



SURVEYOR'S CERTIFICATE

I, James C. Belongia, Professional Land Surveyor, PLS S-2342, do hereby certify:

That in full compliance with the provisions of Chapter 236, Wisconsin Statutes, and the subdivision regulations of the City of Manitowoc and the Manitowoc County Planning Commission and under the directions of the owners listed hereon, I have surveyed, divided and mapped "The Preserve At Lincoln Park", and that such plat correctly represents all exterior boundaries and the subdivision of the land surveyed and further described as follows:

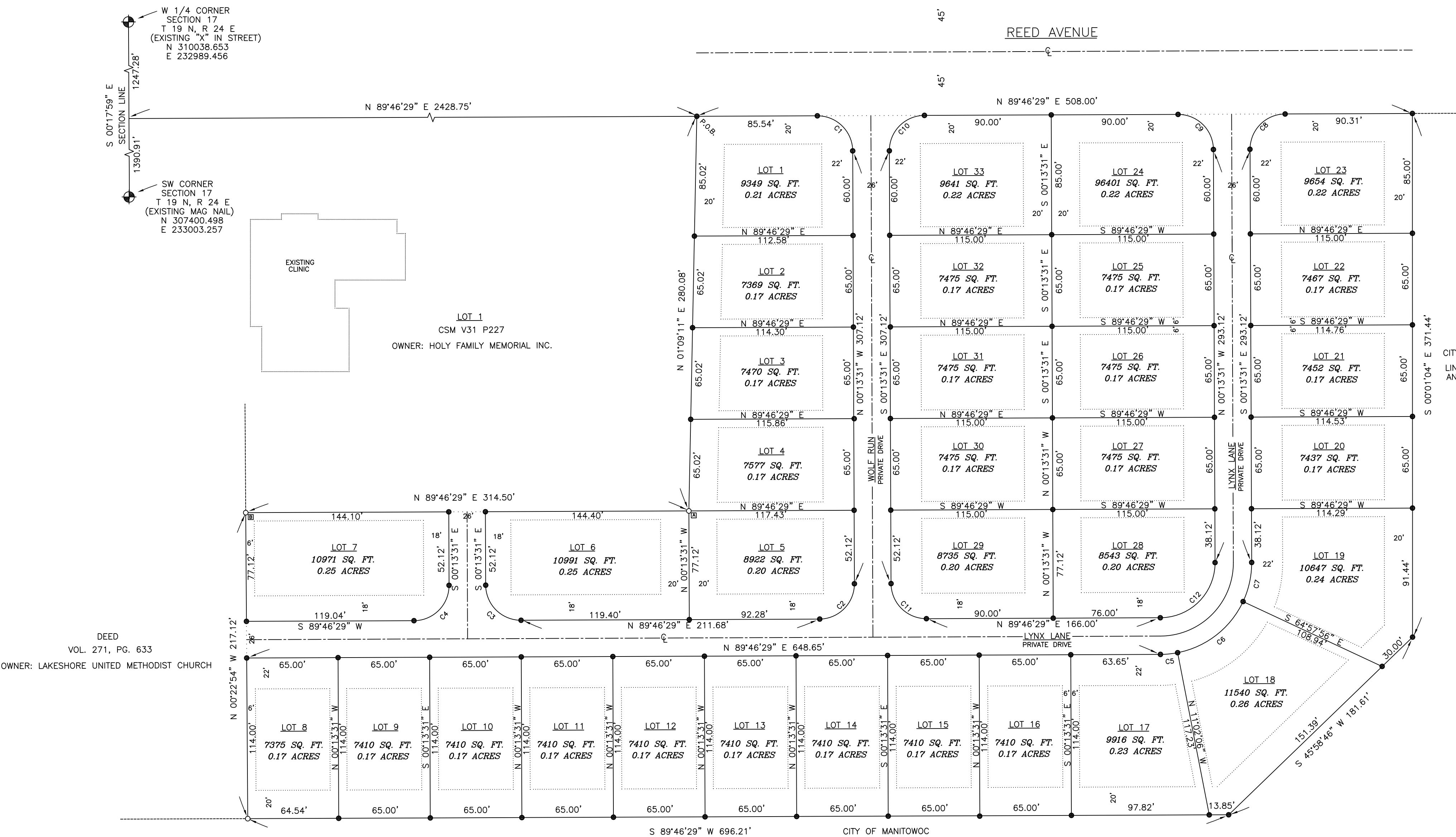
Commencing at the West 1/4 corner of Section 17; thence S 00°17'59" E along the section line a distance of 1247.28 feet; thence N 89°46'29" E along the southerly right of way of Reed Avenue a distance of 2428.75 feet to the northwesterly corner of Lot 2 of a Certified Survey Map recorded in Volume 31 on Page 227 and the point of real beginning; thence continue N 89°46'29" E along said right of way a distance of 508.00 feet; thence S 00°01'04" E a distance of 371.44 feet; thence S 45°58'48" W a distance of 181.61 feet; thence S 89°46'29" W a distance of 696.21 feet; thence N 00°22'54" W a distance of 217.12 feet; thence N 89°46'29" E a distance of 314.50 feet; thence N 01°09'11" E a distance of 280.08 feet to the point of real beginning.

Parcel contains 314,450 square feet or 7.22 acres of land more or less.

The above description is subject to any and all easements and restrictions of record.

Dated \_\_\_\_\_

James C. Belongia, PLS S-2342



CERTIFICATE OF FINANCE DIRECTOR - TREASURER

I, \_\_\_\_\_, being the duly appointed and acting Finance Director - Treasurer of the City of Manitowoc, do hereby certify that in accordance with the records in my office, there are no unpaid taxes or special assessments as of \_\_\_\_\_, 2022, on any land included in this plat of The Preserve At Lincoln Park.

Dated \_\_\_\_\_ Finance Director - Treasurer

CERTIFICATE OF COUNTY TREASURER

STATE OF WISCONSIN ]  
] SS  
COUNTY OF MANITOWOC ]

I, \_\_\_\_\_, being duly elected and acting Treasurer of the County of Manitowoc, do hereby certify that the records in my office show no unredemmed tax sales and no unpaid taxes or special assessments as of \_\_\_\_\_, 2022, affecting the lands included in the plat of The Preserve At Lincoln Park.

Dated \_\_\_\_\_ County Treasurer

CERTIFICATE

STATE OF WISCONSIN ]  
] SS  
COUNTY OF MANITOWOC ]

I, Mackenzie Reed-Kadow, City Clerk of and for the City of Manitowoc of the State of Wisconsin, do hereby certify that I have compared the resolution on this plat with the original of said resolution on file in my office, and that said resolution is a true and correct copy of such original resolution duly and regularly adopted by the Common Council of the City of Manitowoc, Wisconsin, at a meeting held on \_\_\_\_\_

WITNESS MY HAND, and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022

Mackenzie Reed-Kadow  
City Clerk

CORPORATE OWNER'S CERTIFICATE

Eastpoint Land Development LLC, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, does hereby certify that I caused the land described and easements granted on this Plat to be surveyed, divided, mapped and dedicated as represented on this plat of The Preserve At Lincoln Park and that we shall comply with the established drainage plan on file at the Manitowoc City Hall and with the "Standard Utility Easement Conditions" recorded at the Manitowoc County Register of Deeds on November 7, 1997 in Volume 1252, page 498 of Records, Document No. 798738, and as may be amended from time to time. Eastpoint Land Development, LLC, also certifies that this Plat is required by S.236.10 or S.236.12 to be submitted to the following for approval or objection:

CITY OF MANITOWOC  
WISCONSIN DEPARTMENT OF ADMINISTRATION

In Witness Whereof, the said \_\_\_\_\_ has caused these presents to be signed by \_\_\_\_\_ its \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

STATE OF WISCONSIN ]  
] SS  
COUNTY OF MANITOWOC ]

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 the above named officer of said corporation and acknowledged that he executed the foregoing instrument as such officer as the deed of said corporation, by its authority.

Notary Public  
Manitowoc County, Wisconsin My Commission Expires \_\_\_\_\_

COMMON COUNCIL RESOLUTION

WHEREAS the Final Plat of The Preserve At Lincoln Park has been reviewed by the City Plan Commission on \_\_\_\_\_ and WHEREAS the City Plan Commission did recommend the acceptance of the Final Plat with the following conditions:

- 1) That the subdivider and future owners covenant to comply with the established drainage plan.
- 2) That the Final Plat meet all of the requirements of the City of Manitowoc Subdivision Code, Chapter 236 of the Statutes of the State of Wisconsin and the City's Comprehensive Plan adopted December 21, 2009 in accordance with 62.23(3) of the Statutes of the State of Wisconsin, as amended.
- 3) That all minimum required improvements be approved by the City of Manitowoc's Director of Public Infrastructure.
- 4) That the subdivider's engineer certify that all improvements have been installed as per plans and specifications to the satisfaction of the City and the Director of Public Infrastructure, and City Engineer.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Common Council that the Final Plat of The Preserve At Lincoln Park be accepted, based upon compliance with the aforementioned conditions.

INTRODUCED \_\_\_\_\_

ADOPTED \_\_\_\_\_

APPROVED \_\_\_\_\_

MAYOR Justin M. Nickles, Mayor

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

PRELIMINARY PLAT

THE PRESERVE AT LINCOLN PARK

DRAWING:

DATE: DECEMBER 2022

DRAWN BY: JAMES C. BELONGIA

APPROVED BY:

JOB NO.: 202211

CAD FILE: DRAWINGS/202211.DWG

SCALE: 1" = 50'

SHEET: 1 OF 1

BELONGIA LAND SURVEYING, LLC  
1117 PHILIPPEN STREET  
MANITOWOC, WI. 54220-3147  
PHONE 920-684-4237

OWNER: EASTPOINT LAND DEVELOPMENT, LLC  
P.O. BOX 132  
MANITOWOC, WI 54221  
CONTACT: MIKE HOWE 920-242-3111  
TAX ID NO. 05281730401000

MIKE HOWE BUILDERS, INC.

# DRAFT 1/19/2023

## IMPLEMENTATION PLAN FOR PLANNED UNIT DEVELOPMENT (PUD) CITY OF MANITOWOC, WISCONSIN

This Planned Unit Development (PUD), to be known as The Preserve at Lincoln Park PUD (“The Preserve”) is approved **this \_\_\_\_\_ day of \_\_\_\_\_, 2023** by the Common Council of the City of Manitowoc, Wisconsin, a Wisconsin Municipal Corporation, (hereinafter referred to as the “City”) for certain real property located in the City of Manitowoc, Manitowoc County, WI and described **in Exhibit “A” which is attached** and incorporated herein by reference (hereinafter referred to as the “PUD” or the “PROPERTY”). This Implementation Plan (hereinafter referred to as the “PLAN”) for The Preserve PUD is made and entered into by and between Eastpoint Land Development, LLC a Wisconsin Limited Liability Company (hereinafter referred to as the “Owner/Developer”) and the City.

WHEREAS, the City’s Common Council has approved a General Development Plan on \_\_\_\_\_, 2023 (Report # \_\_\_\_\_ - \_\_\_\_\_), and approved a Conditional Use Permit (Report # \_\_\_\_\_ - \_\_\_\_\_) pursuant to Section 15.750(4) of the City’s Municipal Code (hereinafter referred to as the “Code”) for The Preserve PUD; and

**WHEREAS, the City’s Common Council has approved a final site plan and Final Development Plan on \_\_\_\_\_, 2023 (Report # \_\_\_\_\_ - \_\_\_\_\_) pursuant to Section 15.750(16) of the Code for The Preserve PUD, and**

WHEREAS, the City has authorized the preparation, execution and recording of the PLAN pursuant to Section 15.750(17) of the Code for The Preserve PUD; and

WHEREAS, the parties hereto wish to notify all interested parties of the existence of said PUD and this PLAN;

NOW, THEREFORE, in consideration of the foregoing recitals, the Owner/Developer and the City hereby notify all interested parties as follows:

### **A. GENERAL PUD STANDARDS**

#### **1. Existence of The Preserve at Lincoln Park PUD.**

The parties hereto have entered into a mutually agreeable PLAN for the PROPERTY which designates and establishes the general land uses and area regulations which shall be permitted on the PROPERTY; provides detailed development guidelines and conditions which must be complied with by the Owner/Developer and all subsequent PROPERTY owners, lessees, licensees or agents of all or any part of the PROPERTY (hereinafter referred to as the “Successors”); and provides a specific implementation plan. The PLAN designates and specifies improvements that must be made, and conditions that must be fulfilled by the Owner/Developer in conjunction with the PUD designation. All easements, either public or

private, within the PUD are subject further to the terms and conditions of “Standard Utility Easement Conditions” recorded in V. 1252, P. 498 in the Office of the Register of Deeds for Manitowoc County, Wisconsin.

2. **Location of PLAN and AGREEMENT.** The PLAN for *The Preserve at Lincoln Park PUD* is on file with the City’s Community Development Department (hereinafter referred to as the “DEPARTMENT”) at 900 Quay Street, Manitowoc WI 54220-4543, and is subject to review and reproduction by all interested parties upon request. The PROPERTY shall be developed substantially in accordance with the most current and City-approved PROPERTY development plans prepared by Belongie Land Surveying, LLC and sewer, water, utility and street plans prepared by Eastpoint Engineering Group, LLC and entitled “*The Preserve at Lincoln Park*”; said plans are incorporated herein by reference.
3. **Subsequent Purchasers.** A PUD is a zoning overlay district under Section 15.750 of the Municipal Code. This PLAN is a covenant that shall run with the PROPERTY. Accordingly, all future Successors shall be responsible to familiarize themselves with the PLAN and zoning designations and requirements underlying the area included in the PUD.
4. **Amendments to PLAN.** Pursuant to Section 15.750(20) of the Code, major changes (Section 15.750(20)(a)) in the PLAN require approval by the City and subsequent recording of a written amendment to the PLAN, with recording fees to be paid by the non-City party(ies). Minor changes to the PLAN of the Code requires the approval of the City’s Planner, Community Development Director or City’s Director of Public Infrastructure/Engineer (Section 15.750(20)(b)) of the Code. As the term “City” is used throughout this Plan, “City” shall mean the Common Council, unless specified otherwise. As the term “DEPARTMENT” or “City Planner” is used throughout this PUD, the terms shall be used interchangeably, and in the absence of the City Planner, the Community Development Director.
5. **Development Guidelines and Conditions.** The development guidelines contained herein shall limit and control the location and use of the PROPERTY, including the internal use of buildings and structures. Lot/tract (hereinafter referred to as either “a Lot”, “Lots” or “Tract”) numbers referenced in this section are identified in Exhibit “A” and the geographic area of the depicted lots in Exhibit “A” shall govern development in these same geographic areas, regardless of whether Lot numbers are modified after \_\_\_\_\_, 2023 by any land division pursuant to Wis. Stats. Ch. 236 and Chapter 21 of the Code. Any new Certified Survey Map (hereinafter referred to as “CSM”) created and approved by the City after \_\_\_\_\_, 2023 shall include a reference to “The Preserves PUD # PC4-2023” and the underlying Lot numbers identified in Exhibit “A”. The CITY’s Zoning Code shall control any land use and development guideline unless it is deviated by this PLAN.
6. **Home Owner’s Association.** The Owner/Developer will prepare the by-laws of a Home Owner’s Association (HOA) which details the roles and responsibilities of the current and successor property owners in the PROPERTY; subsequent PROPERTY owners, lessees,

licensees or agents of all or any part of the PROPERTY will be bound to the Home Owners Association by-laws and this PLAN. By-Laws of the Home Owner's Association are private party agreements and are not enforced by the City of Manitowoc.

7. **Private Utilities.** All utilities in the PROPERTY will be installed and paid for by the Owner/Developer and any and all future maintenance, updates, improvements and removal costs will be the sole responsibility of the Owner/Developer and or Home Owner's Association. Any costs associated with the maintenance, updates, improvements and removal of private utility connections or laterals from the PROPERTY to the public sanitary, storm or water main or manhole in Reed Avenue is also the responsibility of the Owner/Developer and/or Home Owners Association.
8. **Public Access.** Public access to the PROPERTY is shown on **Exhibit A**. The public access drives are identified as Lynx Lane and Wolf Run. The City will not be responsible for any future maintenance costs on the access drives in the PROPERTY including but not limited to: snowplowing, street sweeping, leaf pickup, sealing, crack filling, repaving, reconstruction or similar activities; all these costs will be the responsibility of the Owner/Developer and/or Home Owner's Association.
9. **Public Access Defined as an Outlot.** For tax purposes and land records the access drives will be designated as an outlot on the subdivision plat and will have a distinct tax parcel number. The tax bill for said outlot will be mailed to the Owner/Developer and/or president of the Home Owner's Association.

## **B. DEVELOPMENT STANDARDS**

### **1. LAND USES**

- a. The permitted uses and conditional uses at the PROPERTY shall include single and two family residential uses only as identified in the City's Zoning Code under "B-1" (Section 15.230).

### **2. BUILDING DESIGN STANDARDS**

- a. All buildings and structures within the PROPERTY shall be designed so as to create a unified design theme. All buildings and structures within the PROPERTY shall comply with the following design standards.

### **3. SIGNS**

- a. N.A.

4. PUBLIC ACCESS / OFF-STREET PARKING LOTS / LOADING AREAS

- a. Public access is provided over a private drive which is 26 feet wide.
- b. Snow removal and all maintenance to be done by Owner/Developer and/or HOA.
- c. The Owner/Developer shall provide the Department with copies of any cross easements for ingress/egress for review and approval, prior to its execution.

5. LANDSCAPE TREATMENT

- a. Minimum Landscape Area. Thirty percent of the gross acreage of the Property shall be landscaped.
- b. All landscaping within the PROPERTY shall be designed to enhance architectural features, improve appearances.
- c. Trees shall be selected for ultimate height, breadth of crown, type of shading, color and hardiness. Shrubs and ground cover shall be selected for year-round appearance, texture, color, ultimate height and hardiness.

6. STORM WATER DETENTION/RETENTION FACILITIES

- a. Appropriate detention and retention of storm water shall be provided by the Owner/Developer. All Lots on the PROPERTY are required to have positive drainage, and shall not be permitted to drain to any adjacent Lot, unless approved by the City's Public Infrastructure/Engineer office.
- b. A storm water detention / retention facility will be constructed at Owners expense on property owned by the City of Manitowoc which is located directly east of the PROPERTY. The City and Owner will enter into a lease granting the Owner and their contractor access to construct the storm water pond.
- c. The City assumes responsibility of future maintenance on its property once the storm water pond has been built to construction drawings and specifications and fully inspected, approved and accepted by the City.
- d. All storm water detention/retention facilities shall be designed pursuant to current standards of the Wisconsin Department of Natural Resource and the City's



Public Infrastructure/Engineer office so that during nonevent periods there will be permanent vegetation cover. The plant materials installed in detention/retention facilities must be able to withstand periodic flooding.

- e. Storm water detention/retention facilities shall be designed and landscaped so that they provide an aesthetic amenity, as well as, provide storm water storage capacity. Detention/retention facilities shall be developed substantially in accordance with the Eastpoint engineering PLANS.

## 7. ELECTRIC SERVICE & EXTERIOR LIGHTING

- a. All new utility distribution installations, excluding transformers and telephone boxes, shall be located underground to meet standards established by the Manitowoc Public Utilities (MPU). Transformers and associated structures shall be recessed into the ground wherever possible, to maximize the aesthetics of the area.
- b. All access drive light poles shall be black in color.

## 8. MAINTENANCE

- a. All lots on the PROPERTY shall follow the minimum property maintenance requirements in the Municipal Code.

## C. DEVELOPMENT REGULATIONS

- a. The following development regulations represent the minimum allowable restrictions on lots within the PROPERTY:
  - i. Minimum lot size – 7,000 square feet in gross area.
  - ii. Minimum Lot frontage on the access road – Sixty-Five (65) feet.
  - iii. Maximum building height – Building height shall not exceed 35 feet.
  - iv. Access – provided over a 26-foot public access easement labeled as Lynx Lane and Wolf Run.

v. Single -Family Dwelling - Maximum Square Footage – 2,500 square feet

vi. Setbacks:

1. Front and Rear Yard. All front and rear yard setbacks are shown on Exhibit A unless easement widths are greater. All setbacks are subject to vision clearance requirements.
2. Side Yard. Interior side lot lines - 6 feet. Side yard setbacks may be reduced to 3 feet as long as there is a minimum of 12 feet between structures. The aggregated minimum side yard separation between structures shall never be less than 12 feet.

vii. Utilities - All new electric, telephone, cable and other communication lines and services, both main and service connections, shall be provided by underground wiring within easements or within any R/W. All new utility lines shall be installed in full accordance with the terms, conditions and standards of each utility provider.

#### **D. GENERAL PROVISIONS**

1. **Breach of PLAN.** If at any time any provision or requirement stated in the PLAN have been breached by the Owner/Developer, the City may withhold approval of any or all land divisions or plot plan, or the issuance of any or all grading or building permits or occupancy permits, applied for on the PROPERTY, until such breach has been remedied.
2. **Binding Effect.** This PLAN shall run with the PROPERTY and be binding upon the Owner/Developer, their respective Successors, representatives and assigns, and all persons who may hereafter acquire an interest in the PROPERTY or any part thereof, with the exception that provisions of this PLAN may be modified through an amendment in accordance with the procedure specified in the PLAN.
3. **Recordation.** This PLAN and any subsequent modifications thereof or additions thereto shall be, upon being duly executed, recorded by the CITY at the Owner/Developer's sole expense, at the Register of Deeds for Manitowoc County, Wisconsin, and shall be deemed to be and interpreted as a covenant running with the PROPERTY.

4. Approvals in Writing. Whenever under this PLAN approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing, signed by the duly authorized officer of the City, and delivered to the party to whom it is directed at the address specified in Section C.6.
5. Inspection of Records. The City shall have the right to inspect any and all records, contracts, financial statements, ledgers or written documents which relate to and are generated by the responsibilities and obligations of the Owner/Developer under the terms of this PLAN.
6. Notices and Demands. A notice, demand or other communication under this PLAN by any party to any other party shall be sufficiently given or delivered if it is dispatched by facsimile transmission, or by first class mail, or by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and:
  - a. In the case of the Owner/Developer, addressed to or delivered personally to Eastpoint Land Development LLC, 1013 Viebahn Street, Manitowoc, WI 54220 ; and
  - b. In the case of the City, addressed to or delivered personally to the City Clerk's Office, City Hall, 900 Quay Street, Manitowoc, WI 54220-4543.

The above addresses may be changed at any time by the parties by notice given in the manner provided above.

The parties further agree that electronically reproduced signatures such as by e-mail or facsimile transmission are valid for execution or amendment of this PLAN, and that electronic transmission / facsimile is an authorized form of notice as that term is used in this PLAN.

7. Severability. If any provisions of this PLAN is deemed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this PLAN shall not be affected thereby, and such remainder would then continue to conform to the requirements of applicable laws and regulations.
8. Amendments. This PLAN can only be modified or changed in writing executed by all undersigned parties.

9. Successors and Assigns. The terms of this PLAN shall be binding upon and inure to the benefit of the parties hereto, as well as their respective Successors, transferees and assigns. Any transfer of any party's interest under this PLAN shall not release the transferor from his or its obligations hereunder.
10. Time of Essence. Time is of the essence of this PLAN and of every term, covenant, condition, warranty or promise to be performed by the parties.
11. Assignment. The Owner/Developer shall not assign this PLAN, or any part of it, without the prior written consent of the City.
12. Applicable Law. This PLAN shall be deemed to have been made in Manitowoc County, Wisconsin, and shall be governed by, construed under, and enforced in accordance with, the law of the State of Wisconsin, except as otherwise provided herein. All actions or proceedings relating directly or indirectly to this PLAN, whether sounding in contract or tort, shall be litigated only in the circuit court located in Manitowoc County, Wisconsin. All parties to this PLAN hereby subject themselves to the jurisdiction of the circuit court for Manitowoc County, Wisconsin.
13. Headings. The section titles have been inserted in this PLAN primarily for convenience, and do not define, limit or construe the contents of such paragraphs. If headings conflict with the text, the text shall control.
14. Pronouns. Pronouns in this PLAN (including, but not limited to, those referring to the Owner/Developer and the City), importing any specific gender shall be interpreted to refer to limited liability companies, corporations, partnerships, men and women, as the identity of the parties hereto, or the parties herein referred to, may require. Pronouns, verbs, and/or other words in this PLAN importing the singular number shall be interpreted as plural, and plural words as singular, as the identity of the parties hereto, or the parties or objects herein referred to, may require.
15. Relationship of Parties. Nothing in this PLAN nor any act of the Owner/Developer or the City shall be deemed or construed to create any relationship of third party beneficiary, of principal or agent, of limited or general partners, of joint venture, or of any association whatsoever between the parties hereto.
16. Survival of Warranties, Representations and Agreements. Any warranty, representation or agreement herein contained shall survive the date of this PLAN.

- 17. Construction. All parties have contributed to the drafting of this PLAN. In the event of a controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this PLAN or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against any party hereunder by virtue of that party having drafted this PLAN or any portion thereof.
  
- 18. Entire Designation. This PLAN contains all provisions and requirements incumbent upon the Owner/Developer relative to The Preserve at Lincoln Park PUD, except as modified by subsequent action of the City in accordance with procedures set forth in this PLAN, and except that nothing contained herein shall be construed as waiving any requirements of the Code or other regulations otherwise applicable to the development of the PROPERTY.
  
- 19. Date. This PLAN shall be dated and approved and binding as of the date of the last execution. This PLAN shall be effective the date of recordation.

DRAFT