

**RIGHT-OF-WAY USE, INDEMNIFICATION AND WAIVER AGREEMENT**

**DOCUMENT NO.**

The Village of Elm Grove ("Grantor") hereby grant JOSEPH P. ZVESPER and CARRIE A. ZVESPER ("Grantees") a limited non-exclusive license to make those specific improvements and/or modifications to the Village's right-of-way that are described herein within the Village's right-of-way. In consideration for the representations and warranties contained herein by Grantees, on their own behalf and on behalf of its successors in interest.

1. Licensed Area.

a. Subject to the provisions of this Agreement, the Grantees shall have a limited, non-exclusive right to make the following improvements and/or modifications to the property commonly referred to as 830 Morningside Lane in the Village of Elm Grove, County of Waukesha, Wisconsin:

- Remove approximately 60 linear feet of existing stone along the edge of Morningside Lane;
- The remaining 12' of stone wall which sits parallel to Morningside Lane will be moved back 3' from the edge of the pavement and shall be tapered into grade from the corner adjacent to the driveway entrance;
- Grade back the slope approximately 10' into the yard and dispose of excess soil;
- Top-dress with topsoil;
- Add started fertilizer and seed with sunny mix seed; and
- Cover with straw erosion blanket.

The above is reflected in the Letter dated June 25, 2024 from LandWorks, Inc. which is attached hereto as **Exhibit "A"** and is incorporated herein by reference as though set forth in full. The licensed area is depicted in the Roadside Plan which is attached hereto as **Exhibit "B"** and is incorporated herein by reference as though set forth in full.

b. Full Legal Description:

Lot 2 in Block 1 in Stenz Crest, being a subdivision of a part of the NW ¼ of Section 25, Town 7 North, Range 20 East, in the Village of Elm Grove, Waukesha County, Wisconsin.

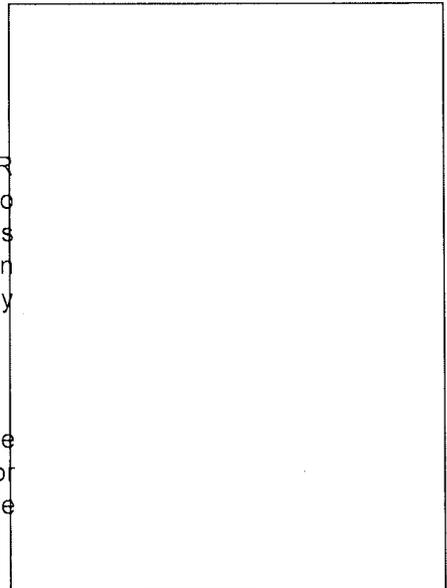
2. Scope of consent

a. Grantees shall have the right to make only those improvements/modifications expressly described in the attached "Exhibit B".

b. No other modifications or improvements shall be made to or within the Village's right-of-way without the Village's prior written consent.

c. Use of the Village's right-of-way is by permission only and the Village retains all rights and interests in the right-of-way.

d. Modifications and/or improvements permitted by the Village are at the Applicant's own risk and the Village shall have no responsibility for replacement, reimbursement, or restoration of any modifications or improvements made by the Applicant as a result of damage, removal, and/or destruction from whatever cause.



RETURN TO:  
Village Clerk  
13600 Juneau Blvd.  
Elm Grove, WI 53122

Tax Key  
EGV 1106147

e. The Village shall have the right to remove and/or modify any and all landscaping, modifications and improvements within the Village right-of-way at any time without prior notification.

f. If the area is not maintained to the satisfaction of the Village, Applicant shall, within such time period as is reasonably established by the Director of Public Works in the written notice provided by the Village, remedy or remove the improvements and/or modifications to the satisfaction of the Director of Public Works.

g. The cost of removal of modifications and/or improvements by the Village shall be billed to the then current owner(s) of the property and, upon failure to pay within thirty (30) days, shall be assessed as a special charge against the abutting property.

h. This Right-Of-Way Use, Indemnification and Waiver Agreement (the "ROW Agreement") is contingent upon the scope of this ROW Agreement being solely related to the specific work as stated above and described in the attached Exhibits (the "Work"). This ROW Agreement does not affect any other aspect of the Subject Property, and no other aspect of the Subject Property is subject to review, modification or otherwise as a result of this ROW Agreement. Grantees are relying upon this representation as part of this ROW Agreement, and if this representation is inaccurate, then this ROW Agreement may be cancelled by Grantees and then shall be null and void as though it was never executed and submitted.

**3. Indemnification. Grantees, on behalf of Grantees and on behalf of their successors in interest, represent and warrant that they shall indemnify the Village, its officers, agents, and employees and save each of them harmless from claims, demands, actions and rights of action for personal injury (including death) and/or damage (including destruction) of property and all other damages of whatever kind arising out of, in consequence of, or on account of any modifications, improvements, or use by the Grantees of the Village's right of way.**

4. The representations and warranties contained herein shall run with the land and shall be binding upon the current property owner(s) and their successors in interest to the subject property and this Right of Way Use.

5. The undersigned represent that they have read, understand, and do hereby consent to all of the provisions contained herein.

GRANTEE SIGNATURE:  Joseph Zuesper

GRANTEE SIGNATURE:  Joseph Zuesper

Date: 08/07/2024

Property Address: 830 Morningside Lane, Elm Grove, WI 53122

Description and location of requested Right-of-Way Improvements and Locations: As stated above and in **Exhibit "B"**.

For Village Use Only:

Application Receipt Date: \_\_\_\_\_

Date Reviewed: \_\_\_\_\_ Village Seal

Reviewed by: \_\_\_\_\_

Drafted by: \_\_\_\_\_

Referral to Public Works/Utility Committee: \_\_\_\_ Yes \_\_\_\_ No Date of Review \_\_\_\_\_

Village Board of Trustees Action Date [if applicable] \_\_\_\_\_

Approved: \_\_\_\_\_

\_\_\_\_\_ [Name and Title]

Recording Fee \$30.00 due at time of application



Landscape Design/Architecture  
Landscape Construction  
Landscape Maintenance  
Seasonal Color  
Holiday Decorating

June 25, 2024

Richard Paul, Jr.  
Director of Public Works  
Village of Elm Grove

Dear Richard,

This letter is in response to the letter you sent the residents of 830 Morningside Lane dated April 9th, 2024.

You are correct, the existing stone wall was repaired by LandWorks. LandWorks did not initially install the wall, but I have been informed the stone wall has been there preceding the Zvesper's owning the home for the past 10 plus years. I'm told it has never been an issue, including when it was first installed several years prior to Zvesper's owning the property.

In my professional opinion, the existing stone wall along the driveway is a critical structure that needs to remain in place for proper drainage away from Zvesper's garage. The remainder of the wall, approx. 12 feet from the corner, is largely aesthetic and decorative. We agreed at our meeting on June 12<sup>th</sup> 2024 to do the following:

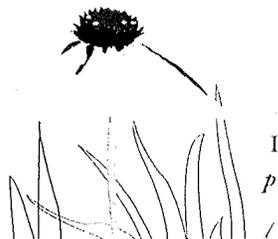
- Remove approx. 60 linear feet of existing stone along the edge of Morningside Lane.
- The remaining 12' of the wall, parallel to the road, will be moved back 3' from the edge of the pavement and tapered into grade from the corner adjacent to the driveway entrance.
- Grade back the slope approx. 10' into the yard and dispose excess soil.
- Top-dress with topsoil.
- Add started fertilizer and seed with sunny mix seed.
- Cover with straw erosion blanket.

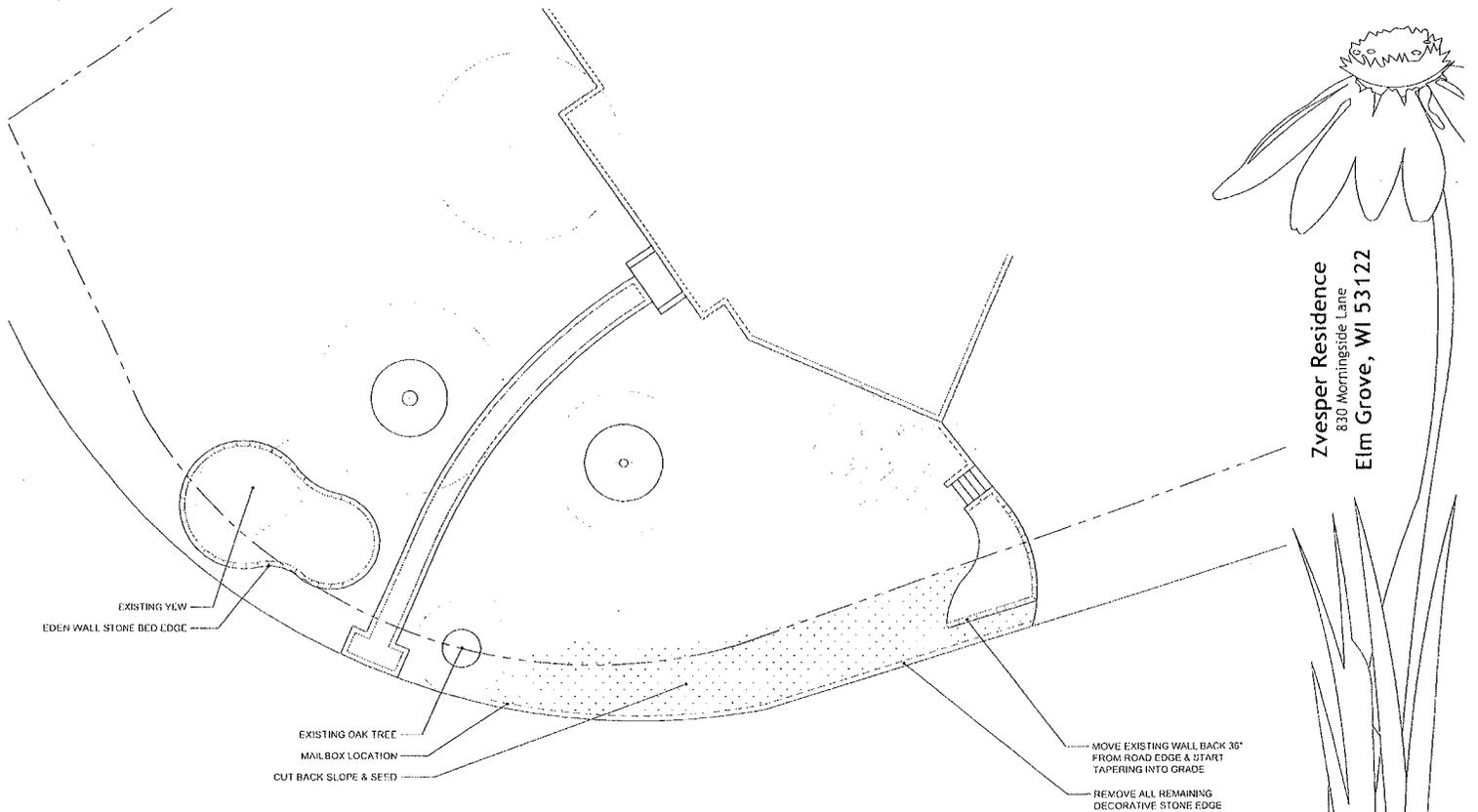
Sincerely,

*Brian Zimmerman; PLA, ASLA*

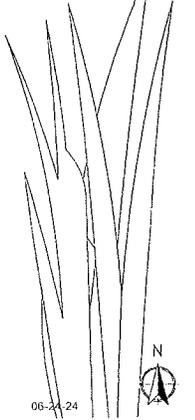
Brian Zimmerman; PLA, ASLA

Exhibit A





Zvesper Residence  
830 Morningside Lane  
Elm Grove, WI 53122



06-24-24



www.landworksinc.com  
200 WISCONSIN DR  
SUNNYVALE, WI 53187  
P. 414.930.2800

Scale: 1/8" = 1'-0"



Exhibit B