


Legal Memorandum

To: Board of Public Works

From: Stephen F. Matty- City Attorney 

Date: July 13, 2021

Re: Well Trust Agreement - County Road FA - Fitzpatrick Tract- A18-00805

The City purchased two parcels on Country Road FA from Tom Fitzpatrick in 2003. These parcels were included in Articles of Trust, which were recorded on January 22, 1987 with the La Crosse County Register of Deeds. A copy of the Articles of Trust are attached for reference.

On September 11, 2003, the Common Council approved a conservation easement, assignment of stewardship grant, management contract and well usage agreement. However, a signed well usage agreement on behalf of the City of La Crosse has not be located.

The Articles of Trust at Section 8, state that the water agreement is "for residential purposes only." The City of La Crosse does not currently own nor is there any plan to add any residences to either of these parcels. There has also never been any water access to either of these parcels.

The City has been contacted by the FA Community Well, LLC., who are the current members of the well trust. Attached is a Termination of Articles of Trust, which will release the City from any obligation regarding the trust. At this time, it does not appear that the City of La Crosse is receiving any benefit from the Well Trust and, therefore, it is the recommendation of the Legal Department that the Termination of Articles of Trust be executed by the City.

* * *

Attachments:

- Articles of Trust dated January 22, 1987
- Amended Resolution #2003-09-049 dated September 11, 2003
- Minutes from FA Community Well, LLC dated October 16, 2018
- Termination of Articles of Trust

ARTICLES OF TRUST

WHEREAS, the undersigned, being all of the owners of real estate described in Exhibit "A" attached hereto, and all being part owners of a water supply system capable of serving eleven parcels, which system is located on said real estate (hereinafter owners); and

JAN 22 1987

RECORDED
AT 3:55 P M
DORIS L. PICHHA
REGISTER OF DEEDS
La Crosse County, WI

WHEREAS, the said water supply system consists of a well and pump, located on parcel 4 (as shown in Exhibit "B" attached hereto), underground water mains connected to a stub on each of 7 parcels (Exhibit B) and 4 parcels and stubs to be located at a later time.

WHEREAS, the undersigned wish to provide for joint ownership, maintenance and operation of said water supply system,

NOW, THEREFORE, the undersigned agree as follows:

1. That each of the undersigned shall, and hereby do, convey all of their interest in said water supply system to the Trustee described below, subject to the terms and conditions of this document.

2. A Trustee shall be selected annually for the purpose of managing and operating the water system. Michael A. Jiracek shall be the Trustee for the first year, beginning December 1, 1985. Such Trustee shall be elected on the first day of December in each year in the manner following:

The then-acting Trustee shall give ten (10) days notice to all owners shown on the water system records, of the proposed meeting for the election of a trustee. Such meeting shall be held at a place in the City of La Crosse, Wisconsin designated by the Trustee and reasonably convenient for the transaction

of business. The Trustee shall be elected at such meeting by a majority of the owners of the parcels (each owner gets one vote for each parcel he or she owns).

3. The Trustee shall maintain accurate books and reports showing the operation of said trust and shall be entitled to such compensation as may be agreed upon at the annual meeting.

4. The Trustee shall promulgate rules and regulations relating to the use of water supplied by the water supply systems, subject to the approval of the owners of a majority of the parcels (each owner gets one vote for each parcel he or she owns). The Trustee shall require monthly payments by all owners so as to assure sufficient funds to cover all expenses of operation including maintenance and repairs subject to the approval of owners of a majority of the parcels. In the event that any owner shall fail to pay any of these charges, then upon five (5) days notice the water service to any and all parcels owned by said owner may be at the option of the Trustee, discontinued, and for this purpose, the Trustee is empowered upon failure of payment of such charges to disconnect and sever any parcel from the water system. Such service shall be reinstated upon payment of all charges in arrears, together with the cost of disconnecting and connecting the service.

5. The Trustee has the right to enter upon any portion of the above described real estate for purposes of inspection of, repair of, maintenance of, or any other purpose related to, the water supply system. Each of the undersigned hereby grant easements over and across his or her property to the Trustee for the installation of, construction of, inspection of, repair of, maintenance of or any other purpose related to, the water supply system.

6. In the event of the death or resignation of the Trustee, a meeting of all of the owners of the parcels shall be held (each owner gets one vote for each parcel he or she owns). Such meeting shall be held upon the same

conditions and under the same rules as an annual meeting for election of Trustees. The successor Trustee elected thereafter shall serve until the next regular election to be held the following December 1.

7. The Trustee may be removed by an affirmative vote of owners of a majority of the parcels (each owner gets one vote for each parcel he or she owns), for any cause, at a meeting called for that purpose. Said meeting may be called by a majority of the owners of the parcels (each owner gets one vote for each parcel he or she owns) upon ten (10) days notice.

8. Each owner may connect laterals to the stubs for the purpose of supplying water to such parcel for residential purposes only in such manner as may be directed by the Trustee, the laying and connection of such laterals to be at the expense of the owner.

9. That all of the undersigned owners shall use the water supply system and not another water supply system, unless he obtains the written consent of all of the owners of the other parcels. No other property except 4 residential lots shall be added to the system.

10. That no action shall be taken by any of the undersigned owners affecting the water supply system without the written consent of all of the other owners of the parcels.

11. Any court of general jurisdiction in La Crosse County shall have jurisdiction over this trust, and the owners of the parcels may apply to such Court by petition for instructions relating to this trust or any matter in connection with the operation of said water supply system.

12. The foregoing shall be construed as covenants running with the land and shall be inserted by reference in all deeds, conveying any part of the property described and shall be deemed to create easements in the land affected thereby, and shall be binding on and shall inure to the benefit

of the owners and their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this 11th day of December, 1985.

Signature of Thomas Fitzpatrick
authenticated this 22nd day of
January, 1987.

Sharon A. Bodenbauer

Notary Public
La Crosse County, Wisconsin.
My Commission expires:

Signature of Brent Johnston
authenticated this 22nd day
of January, 1987.

Sharon A. Bodenbauer

Notary Public
La Crosse County, Wisconsin
My Commission expires:

Signature of Michael A. Jiracek
authenticated this 22nd day
of January, 1987.

James W. McNeilly

James W. McNeilly
Notary Public
La Crosse County Wisconsin.
My Commission expires: permanently

Drafted By:

Bosshard & Associates
P.O. Box 966
La Crosse, Wis. 54602-0966

Thomas Fitzpatrick

Thomas Fitzpatrick

Owner Parcel 1 & 2

Michael A. Jiracek

Michael A. Jiracek

Worrell

Owner Parcel 3

Brent W. Johnston

Brent W. Johnston

Owner Parcel 4

Michael A. Jiracek

Michael A. Jiracek

Owner Parcel 5

Michael A. Jiracek

Michael A. Jiracek

Owner Parcel 6

Michael A. Jiracek

Michael A. Jiracek

Owner Parcel 7

Michael A. Jiracek

Michael A. Jiracek

Owner Parcel 8

Michael A. Jiracek

Michael A. Jiracek

Owner Parcel 9

Michael A. Jiracek

Michael A. Jiracek

Owner Parcel 10

Michael A. Jiracek

Michael A. Jiracek

Owner Parcel 11

Parcels 1 and 2:

Certified Survey Map No. 100 - Vol. 1, Lot 1
Part of the NW $\frac{1}{4}$ - NE $\frac{1}{4}$, Section 34, T 16 N, R 7 W,
Town of Medary, La Crosse County, Wisconsin.

Parcel 3:

Lot 1 of Certified Survey Map filed November 20, 1985, in Vol. 3
of Certified Maps, page 88 as document # 969642 being
located over Lot 2 of Certified Survey Map 100, filed May 26, 1978,
Vol. 1 of Certified Survey Map page 100 as document # 883804
being a portion of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, T 16 N, of
R 7 W, Town of Medary, La Crosse County, Wisconsin.

Parcel 4:

Lot 2 of Certified Survey Map filed November 20, 1985, in Vol. 3
of Certified Survey Maps, page 88 as document # 969642 being
located over lot 2 of Certified Survey Map 100, filed May 26, 1978,
Vol. 1 of Certified Survey Map page 100 as document # 883804, being
a portion of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, T 16 N, of R 7 W,
Town of Medary, County of La Crosse, Wisconsin.

Parcels 5 and 6:

Certified Survey Map No. 100 - Vol. 1 Lot 3
Part of the NW $\frac{1}{4}$ - NE $\frac{1}{4}$, Section 34, T 16 N, R 7 W, Town of
Medary, La Crosse County, Wisconsin.

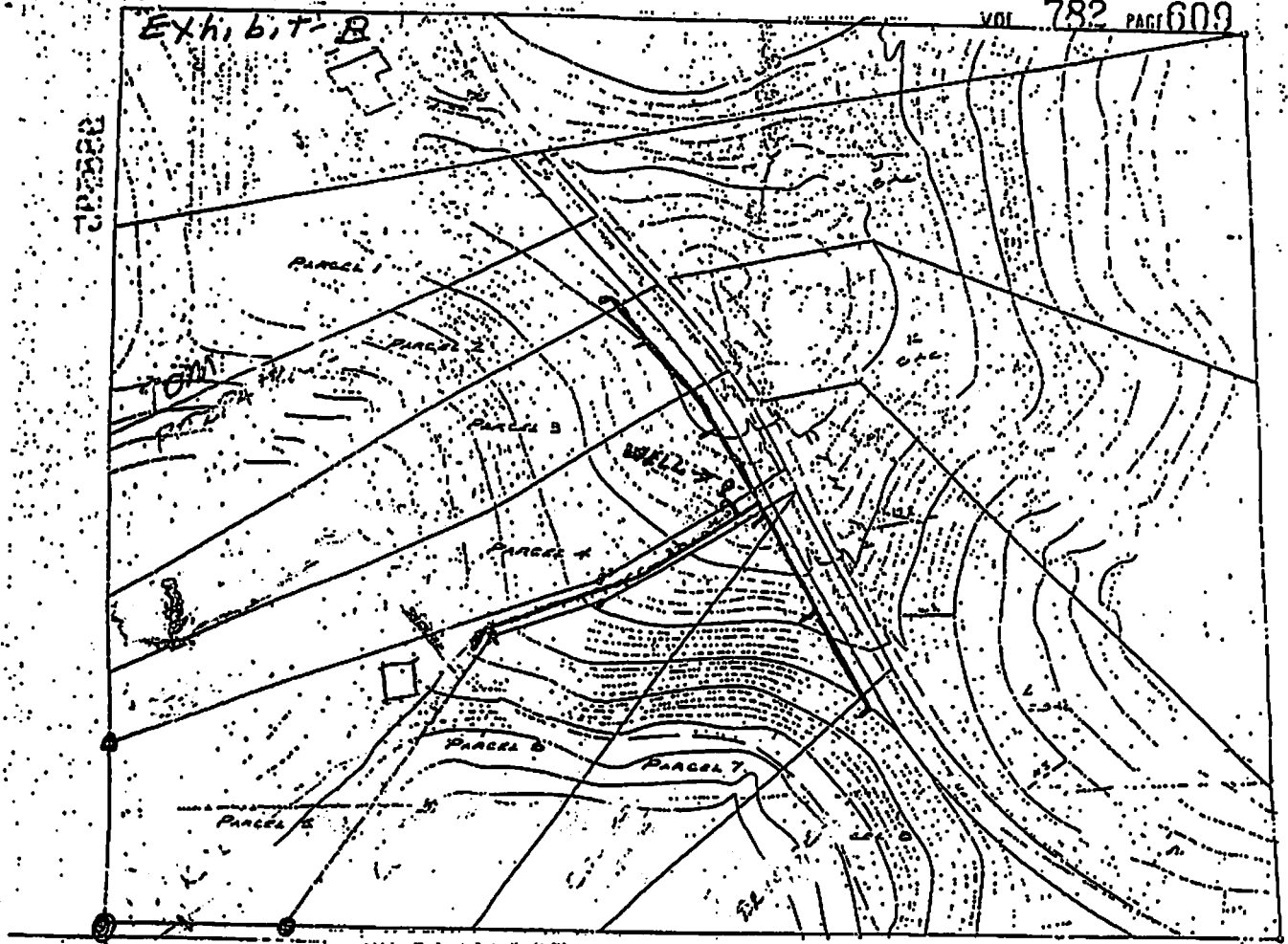
Parcels 7 and 8:

Certified Survey Map No. 100 - Vol 1 Lot 4
Part of the NW $\frac{1}{4}$ - NE $\frac{1}{4}$, Section 34, T 16 N, R 7 W, Town of
Medary, La Crosse County, Wisconsin.

The SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 27, Township 16 North of Range 7 West, Town of
Medary, except the NE $\frac{1}{4}$ of the North $\frac{1}{4}$ of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ described as
follows: Beginning at the Northeast corner of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$; thence
South along the East line thereof 660 feet; thence Northwesterly in a straight
line to the Northwest corner of said SE $\frac{1}{4}$ of the SW $\frac{1}{4}$; thence East along the
North line thereof 1,320 feet to the point of beginning of this exception.

That portion of the SW $\frac{1}{4}$ - SE $\frac{1}{4}$, Section 27, Township 16 North, Range 7 West,
described as follows:

Commencing at a point on the West line of the SW $\frac{1}{4}$ - SE $\frac{1}{4}$,
Section 27, Township 16 North, Range 7 West, 16 feet south of the
centerline of the private road leading to the FAA Tower; thence
easterly parallel to and 16 feet southerly of the centerline of said
private road to the West line of County Trunk FA; thence Northerly
along the West line of County Trunk FA 66 feet, thence Westerly
parallel to and 50 feet northerly of the centerline of the private
road leading to the FAA Tower, to the West line of the SW $\frac{1}{4}$ - SE $\frac{1}{4}$,
Section 27, Township 16 North, Range 7 West; thence South on the
West line of said SW - $\frac{1}{4}$ SE $\frac{1}{4}$ to the point of beginning.



COMMITTEE REPORT

Your Highways, Properties & Utilities Committee and Finance and Personnel Committee having under consideration the annexed resolution approving conservation easement, assignment of stewardship contract, closing documents and well usage arrangement relative to Fitzpatrick tract purchased within the La Crosse Blufflands Protection Program, and said matter having been referred to the Board of Public Works and the City Plan Commission and same having made and filed their reports thereon, recommends the same be adopted as amended.

Respectfully submitted,

Joe Ledvina, Chmn
Larry Lebiecki
Doug Farmer
Mark Johnsrud
Mark Meyer
Jon Olson

REPORT AND
RESOLUTION ADOPTED
SEP 11 2003
BY COUNCIL

File # 2003-09-049

SEP 16 2003

LK
PC
MP

AMENDED RESOLUTION

BE IT RESOLVED by the Common Council of the City of La Crosse that it hereby approves the attached conservation easement, assignment of stewardship grant and management contract and well usage agreement relative to the Fitzpatrick tract acquired in connection with the La Crosse Blufflands Protection Program providing for well rights on both parcels at a total cost of \$90.00.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute any and all documents in connection therewith.

BE IT FURTHER RESOVLED that the City Planner and Board of Public Works are further authorized to take any and all steps necessary to effectuate this resolution.

BE IT FURTHER RESOLVED that costs in connection with the same come from the Operating Budget (general expense) fund.

Typed: 9-5-03
Approved:

FA COMMUNITY WELL LLC

N2841 County Road FA
La Crosse, WI 54601
(608) 785-1773

Meeting of the Well Owners October 16, 2018

Owners Present:

Tom Fitzpatrick, Bill Cerbin, Linda Sible, Rick & Barb Albrechtson, Lisa Young, Mark Koehne, Nancy Gerrard, Elizabeth Belville (City of La Crosse representative)

Agenda Items:

1. Introductions
2. Spreadsheet corrections
3. New control box: It's in and working well-Cost was over \$1800.00. Paid. New savings balance is about \$2,700. Well account has sufficient total to handle bills through 2018. All members are paid up through December 31, 2018
4. Elizabeth Bellville confirmed that the City intends to remove themselves from the well partnership. Tom said that it makes sense since the ownership requirements state that the well can only be used for a residence. Nancy Gerrard stated that she and Rick Staff wished to continue their share in the Partnership.
5. Tom will draft a new agreement which can be signed by all partners agreeing to the partnership. The City was asked to draft a document to eliminate it from the partnership. Rick stated that there may be some statement in the Common Council's minutes wanting the City to be part of the partnership. Elizabeth will research this.
6. Rick stated that with the City not paying an annual maintenance fee beginning in 2019 and that the well pump is close to the end of its life span and that the maintenance balance is now reduced because of the bill for the control box, that we should be thinking of raising the per parcel annual fee. He suggested \$100.00 per parcel per year (9 parcels X \$100.00 = \$900.00 per year). Currently the annual fees total \$550.00. Approved unanimously
7. Tom will send out the current well documents (Articles of Trust and Declaration of Restrictions)
8. Meeting adjourned

Rick Albrechtson
Well Trustee

TERMINATION OF ARTICLES OF TRUST

Name and Return Address

Brandon J. Prinsen
Johns, Flaherty & Collins, S.C.
205 5th Avenue South, Suite 600
La Crosse, WI 54601

See attached Exhibit A

Parcel Numbers

THIS TERMINATION OF ARTICLES OF TRUST ("Termination") is effective this ___ day of _____, 20__, by the undersigned owners ("Parcel Owners") of the real estate and improvements legally described on the attached as Exhibit A ("Parcels").

WHEREAS, the Articles of Trust was recorded in the La Crosse County Register of Deeds office as Document No. 988595 in Volume 782 of records, page 604, on January 22, 1987 ("Articles of Trust"), pursuant to which the Parcel Owners were granted certain rights pertaining to the Well and Water Supply System that supplies water to the Parcels; and

WHEREAS, the Parcel Owners desire to terminate the Articles of Trust pursuant to the terms and conditions set forth in this Termination.

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt which are hereby acknowledged, the parties agree as follows:

1. All of the Parcel Owners hereby agree to terminate the Articles of Trust and all rights and interest of the Parcel Owners thereunder, along with any successors and assigns. This Termination of the Articles of Trust shall be effective immediately.


2. This Termination shall be governed under the laws of the State of Wisconsin and shall be binding on the parties hereto, their heirs, successors and assigns. This Termination shall be recorded in the La Crosse County, Wisconsin, Register of Deeds Office and shall remove the Articles of Trust from the title of all the Parcels.

William J. Cerbin
William J. Cerbin

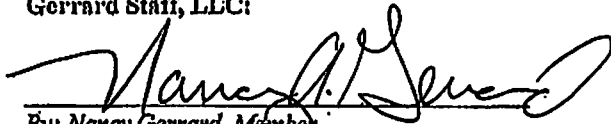
Linda M. Sible
Linda M. Sible

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally appeared before me this 16th day of November, 2019, William J. Cerbin and Linda M. Sible, to me known to be the persons who executed the foregoing instrument and acknowledged the same.


Print Name: Dawn M. Fitzgerald
Notary Public, State of Wisconsin
My Commission is permanent.

Gerrard Staff, LLC:



By: Nancy Gerrard, Member

STATE OF WISCONSIN)

) ss.

LA CROSSE COUNTY)

Personally appeared before me this 24th day of Feb., 2019, Nancy Gerrard, to me known to be the persons who executed the foregoing instrument and acknowledged the same.


Print Name: Thomas A. Fitzpatrick
Notary Public, State of Wisconsin
My Commission is permanent

City of La Crosse:

By: _____
Title: _____

STATE OF WISCONSIN)
) ss.
LA CROSSE COUNTY)

Personally appeared before me this _____ day of _____, 2019, _____ to
me know to be the person who executed the foregoing instrument and acknowledged the same.

Print Name: _____
Notary Public, State of Wisconsin
My Commission _____

EXHIBIT A

Owners: Jesse T. Young and Lisa J. Young

Parcel Number: 9-01370-009

Lot 1 of Certified Survey Map filed April 24, 1986 in Volume 3 of Certified Survey Maps, page 107 as Document No. 974769, being a part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 16 North, Range 7 West, Town of Medary, La Crosse County, Wisconsin.

Owners: Mark W. Koehne and Kathryn M. Riffle Koehne

Parcel Number: 9-01370-010

Lot 2 of Certified Survey Map, filed April 24, 1986 in Volume 3 of Certified Survey Maps, page 107 as Document No. 974769, being a part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 16 North, Range 7 West, Town of Medary, La Crosse County, Wisconsin.

Owners: The Thomas M. Fitzpatrick Trust of 2003

Parcel Number: 9-01370-002

Lot 1 of Certified Survey Map in Volume 1 of Certified Survey Maps, page 100 as Document No. 883804, being a part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 16 North, Range 7 West, Town of Medary, La Crosse County, Wisconsin.

Owners: William J. Cerbin and Linda M. Sible

Parcel Number: 9-01370-003; 9-01370-006

Lots 1 and 2 of Certified Survey Map filed November 20, 1985 in Volume 3 of Certified Survey Maps, page 88 as Document No. 969642, being a part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 16 North, Range 7 West, Town of Medary, La Crosse County, Wisconsin.

Owners: Richard R. Albrechtson and Barbara A. Albrechtson Joint Revocable Trust Dated May 23, 2019

Parcel Numbers: 9-01370-007; 9-01370-008

Lot 1 of Certified Survey Map filed April 24, 1986 in Volume 3 of Certified Survey Maps, page 108 as Document No. 974770, being a part of Lot 3 of Certified Survey Map filed May 26, 1978, in Volume 1 of Certified Survey Maps, page 100 as Document No. 883804, being a part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 16 North, Range 7 West, Town of Medary, La Crosse County, Wisconsin.

Lot 2 of Certified Survey Map filed April 24, 1986 in Volume 3 of Certified Survey Maps, page 108 as Document No. 974770, being a part of the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 34, Township 16 North, Range 7 West, Town of Medary, La Crosse County, Wisconsin.

Owners: Gerrard Staff, LLC
Parcel Numbers: 9-01286-008

Lot 3 of Certified Survey Map filed April 20, 2006 in Volume 12 of Certified Survey Maps, Page 171, as Document Number 1447395, Town of Medary, La Crosse County, Wisconsin.

Owners: City of La Crosse
Parcel Numbers: 17-20268-210; 17-20268-200; 17-20268-220

Lots 1, 2 and 3 of Certified Survey Map #46 filed _____, 20__ in Volume 10, page 46 as Document No. 1300421 of Section 34, Township 16 North, Range 7 West, City of La Crosse, La Crosse County, Wisconsin.