

**CITY OF SHEBOYGAN
R. O. 88-23-24**

BY CITY CLERK.

JANUARY 2, 2024.

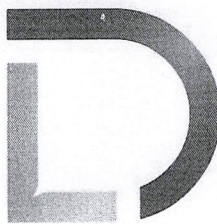
Submitting a Notice of Injury and Claim from Dempsey Law Firm, LLP regarding
Town of Wilson Sanitary District #1.

PARTNERS:

CHARLES J. HERTEL
JOHN A. ST. PETER
PAUL W. ROSENFELDT
BRIAN D. HAMILL
MATTHEW PARMENTIER
HEATH G. MYNSBERGE
JESSICA E. SLAVIN

RETIRED:

TIMOTHY M. DEMPSEY
A.D. (DAN) EDGARTON
ROBERT V. EDGARTON
RONALD L. PETAK
TERRENCE J. BYRNE
RONALD P. HAMMER



DEMPSEY LAW

ASSOCIATES:

ELIZABETH A. HARTMAN
ALANA BUSCH-ELL
ALEX R. ACKERMAN
LEE D. TURONIE
JAMES D. MILLER
EVAN M. SEIBEL
CHUE N. XIONG

OF COUNSEL:

WILLIAM E. BUCHHOLZ
RYAN M. PLISCH
CHRISTOPHER J. PENZA
SAMUEL W. JACK

December 15, 2023

VIA PERSONAL SERVICE

Meredith DeBruin, City of Sheboygan Clerk
828 Center Avenue, Suite 103
Sheboygan, WI 53081

AT
Date 12-19-23 11:35 AM
PER
Civil Process Investigation
820-821-8355

Re: NOTICE OF INJURY AND CLAIM; PURSUANT TO WIS. STAT. SECTION 893.80(1d)

Claimant: Town of Wilson Sanitary District #1
5935 South Business Drive
Sheboygan, WI 53081.

Greetings:

Our office represents the Town of Wilson Sanitary District #1 (the "District"). The purpose of this letter is to state the District's position regarding unpaid deferred assessments by the City of Sheboygan (the "City"). It also includes the information required by the Notice of Claim Statute, although for the reasons described below, compliance with that statute is not required in this case.

I. The Notice of Claims statute does not apply.

a. A notice of claim is not required because the District is making "defensive" claims.

The District is submitting this Notice of Claim only out of an abundance of caution. The District's claim is a defensive, preemptive claim regarding the City's legal obligation to pay deferred assessments that were previously levied in connection with a sanitary district sewer project. Specifically, the District asserts that the City of Sheboygan is responsible for paying three deferred special assessments for tax parcels numbers 59281470988, 59281470989, and 59281470990 (the "Properties").

Confirming the City's responsibility as it relates to the payment of the special assessments is important because the special assessments were used for the purpose of financing a sanitary sewer extension construction project and are required to be paid by those properties that benefitted from the project. In this case, the special assessments were properly assessed and recorded. Additionally, the City's properties benefitted from these improvements.

The District anticipates that the City may refuse to pay its assessments. Accordingly, this is a preemptive or defensive claim that makes strict compliance with the Notice of Claim Statute impractical. The District is seeking to establish a defense against a claim that the City may assert in the future. See Zizzo v. Lakeside Steel & Mfg. Co., 2008 WI App. 69, ¶ 12, 31 Wis. 2d. 463. Further, the District is seeking a declaration of the ongoing "rights, status, and other legal relations" of the parties and assessments in anticipation of a non-payment by the City.

b. The City of Sheboygan has actual notice of the claims.

Under Wis. Stat. § 893.80(1d)(a), "failure to give the requisite notice shall not bar action on the claim if the...agency had actual notice of the claim." This is often referred to as the "actual notice exception" to the Notice of Claim requirement:

Section 893.80(1)(a), STATS., is a notice of injury statute," designed to "allow governmental authorities to make a prompt investigation of the circumstances giving rise to a claim." Elkhorn Area School Dist. v. East Troy Community School Dist., 110 Wis.2d 1, 5, 205 Wis.2d 22 327 N.W.2d 206, 208 (Ct.App.1982); see also Vanstone v. Town of Delafield, 191 Wis.2d 586, 593, 530 N.W.2d 16, 19 (Ct.App.1995) (purpose of § 893.80(1)(a) is to enable entity to "investigate and evaluate" claim). Thus, it permits claims to proceed against the designated government entities even though a claimant has not filed a notice in proper form if the government entity "had actual notice of the claim and the claimant shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial" to the entity. Section 893.80(1)(a). Markweise v. Peck Foods Corp., 205 Wis. 2d 208, 220, 556 N.W.2d 326 (Ct. App. 1996).

Here, the City has actual notice of the District's defensive or preemptive claim because of an extensive history of communication between the District and the City about this issue.

II. Notice of Claim

For the reasons described above, the District does not believe a notice of claim is required. However, out of caution, and in the interest of resolving this matter short of litigation, the District states that the following circumstances give rise to its claim:

1. The City of Sheboygan (the "City") became the owner of real property with the tax numbers of 59281470988, 59281470989, and 59281470990 on August 1, 2000. Collectively, these will be referred to as the "Properties."
2. At the time the City became the owner of the Properties, the Properties were within the boundaries of the District and remained in the District until the Properties were annexed into the City in 2018.
3. In April of 2003, the District levied special assessments against the Properties pursuant to Wis. Stat. § 66.0703 for the purpose of financing a sanitary sewer extension construction project. Attached as Exhibit A is a copy of the Notice of Assessment Lien that was recorded against the Properties.
4. Pursuant to Wis. Stat. § 66.0721, the District deferred certain special assessments for "eligible farmland."
5. Specifically, the assessments were deferred under the District's "Farm Options," which allow for the deferral of assessments on agricultural property. A copy of the District's "Farm Options" is attached as Exhibit B.
6. The Notice of Assessment of Lien and "Farm Options" both provide that deferred assessments become due and owing upon the occurrence of any of several events. Those events include:

- a. A structure located on the eligible farmland or on the parcel for which an assessment is deferred is connected to the municipal water or to the sanitary sewer system;
- b. The eligible farmland is subdivided into two or more parcels, at least one of which is not devoted exclusively to agricultural use;
- c. The eligible farmland is not devoted exclusively to agricultural use for a period of one year or more; and
- d. Agricultural use of the property by a person who is not a family member of the property owner.

7. Each of the Properties have experienced at least one of the above triggering events making the deferred assessment amounts due to the District.

8. The assessment amounts due for each parcel are the following:

- a. Parcel 59281470988 has a balance due of \$28,988.80.
- b. Parcel 59281470989 has a balance due of \$17,244.80.
- c. Parcel 59281470990 has a balance due of \$5,121.60.

9. Therefore, the District demands that the City confirm that it legally responsible for the deferred special assessment payments and pay the special assessments to the District.

10. If the City fails to pay the special assessments for the Properties, the City will initiate a circuit court action seeking the same.

December 11, 2023

Pg 5

The District hopes that it will not be necessary to resort to litigation to collect these outstanding assessments and looks forward to working with the City to make arrangements for their payment.

Sincerely,

DEMPSEY LAW FIRM, LLP

Samuel W. Jack

Samuel W. Jack
swj@dempseylaw.com

Cc: Town of Wilson Sanitary District #1 (via email)

Fond du Lac
10 Forest Avenue, Suite 200
Fond du Lac, WI 54935
920-922-0470

De Pere
2079 Lawrence Drive
De Pere, WI 54115
920-235-7300

Waupun
95 S Harris Avenue
Waupun, WI 53963
920-324-9736

Wausau
500 3rd Street, Suite 420,
Wausau, WI 54403
715-848-2966

Black River Falls
132 Main Street
Black River Falls, WI, 54615
715-670-0048

Oshkosh
210 N. Main Street, Suite 100
Oshkosh, WI 54901
920-235-7300

NOTICE OF ASSESSMENT LIEN

1711600

SHEBOYGAN COUNTY, WI
RECORDED ON

10/10/2003 01:59PM

DARLENE J. NAVIS
REGISTER OF DEEDS

RECORDING FEE: 15.00
TRANSFER FEE:

STAFF ID 6
TRANS # 31000

OF PAGES: 3

Document Number

Return Address:

TOWN OF WILSON
5935 South Business Drive
Sheboygan, WI 53081

Parcel I.D. Number:

Recording Area

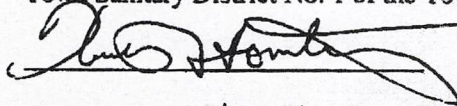
Notice is hereby given that Town Sanitary District No. 1 of the Town of Wilson has levied special assessments pursuant to Section 66.0703 of the Wisconsin Statutes for the purpose of financing a sanitary sewer extension construction project. Pursuant to Section 66.0721 of the Wisconsin Statutes, certain property that is "eligible farmland" as defined in said Section was exempted from current special assessment levy.

Notice is further given that at such time as (i) a structure located on the eligible farmland or on the parcel for which an assessment is deferred is connected to the municipal water or to the sanitary sewer system; (ii) the eligible farmland is subdivided into two or more parcels, at least one of which is not devoted exclusively to agricultural use; or (iii) the eligible farmland is not devoted exclusively to agricultural use for a period of one year or more, a special assessment may be levied against the eligible farmland, or portions thereof, in accordance with the provisions of said Section 66.0721 and 66.0715 of the Wisconsin Statutes.

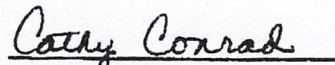
The eligible farmland and other parcels that are or may be affected by this lien is described on Exhibit A, attached hereto and incorporated by reference herein.

Notice is hereby given this 21st day of April, 2003.

Town Sanitary District No. 1 of the Town of Wilson, by:



Signature of Kenneth F. Sonntag
authenticated this 21st day of April, 2003.


Cathy Conrad, Town Clerk

This Instrument drafted by Attorney Kathryn M. Bullon.

Exhibit

A

exhibitmaker.com

**PROPOSED ADDITION
TO THE TOWN OF WILSON S.D. #1**

A parcel of land, being parts of

the NW 1/4 of the SW 1/4 of Section 10,
the SW 1/4 of the SW 1/4 of Section 10,
the SE 1/4 of the SW 1/4 of Section 10,
the SW 1/4 of the SE 1/4 of Section 10,
the NE 1/4 of the NW 1/4 of Section 15,
the NW 1/4 of the NW 1/4 of Section 15,
the NE 1/4 of the NE 1/4 of Section 16, and
the NW 1/4 of the NE 1/4 of Section 16,

all in Township 14 North, Range 23 East, Town of Wilson, Sheboygan County, Wisconsin, being more particularly described as:

Beginning at the Northeast corner of said Section 16;
thence N85°-15'-00"W, along the north line of the NE 1/4 of said Section 16, 2121.96 feet;
thence S04°-45'-00"W, 233.00 feet;
thence S85°-15'-00"E, on a line parallel with and 233.00 feet south of the north line of said NE 1/4 of Section 16, 2141.18 feet to the west line of the NW 1/4 of said Section 15;
thence S00°-02'-01"W, along said west line, 11.41 feet;
thence S83°-18'-59"E, 196.50 feet;
thence N74°-58'-01"E, 71.27 feet;
thence N73°-40'-33"E, 32.14 feet;
thence S88°-32'-48"E, on a line parallel with and 233.00 feet south of the north line of the NW 1/4 of said Section 15, 2297.45 feet to the west line of the NE 1/4 of said Section 15;
thence N00°-18'-03"W, along said west line, 233.02 feet to the South 1/4 corner of said Section 10;
thence S88°-25'-50"E, along the south line of the SE 1/4 of said Section 10, 320.14 feet;
thence N00°-35'-48"E, 233.03 feet;
thence N88°-25'-50"W, 316.42 feet;
thence N88°-32'-48"W, on a line parallel with and 233.00 feet north of the south line of the SW 1/4 of said Section 10, 2363.37 feet;
thence N00°-10'-44"E, on a line parallel with and 233.00 feet east of the west line of said SW 1/4 of Section 10, 791.41 feet;
thence S89°-49'-16"E, 97.00 feet;
thence N00°-10'-44"E, 148.50 feet;
thence N89°-49'-16"W, 97.00 feet;
thence N00°-10'-44"E, on a line parallel with and 233.00 feet east of the west line of said SW 1/4 of Section 10, 601.58 feet;
thence N88°-32'-57"W, 233.06 feet to the west line of said SW 1/4 of Section 10;
thence S00°-10'-44"W, along said west line, 1774.53 feet to the Point of Beginning and the end of this description.

Description by: Ken Wolf, Earth Tech, Inc., April 1, 2003, revised April 24, 2003

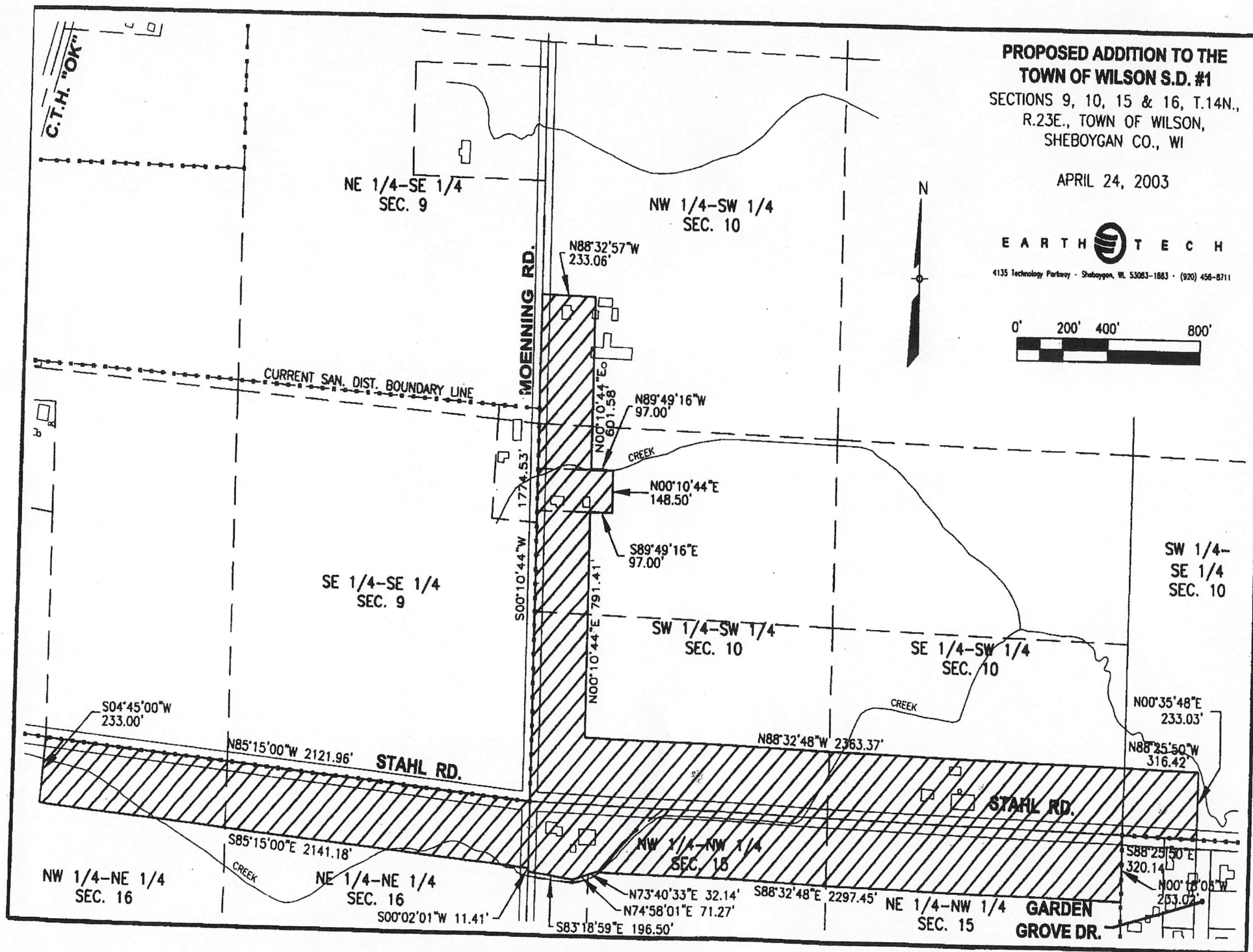
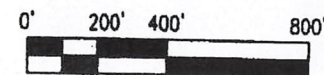
**PROPOSED ADDITION TO THE
TOWN OF WILSON S.D. #1**

SECTIONS 9, 10, 15 & 16, T.14N.,
R.23E., TOWN OF WILSON,
SHEBOYGAN CO., WI

APRIL 24, 2003

EARTH TECH

4135 Technology Parkway • Sheboygan, WI 53083-1883 • (920) 456-8711



NOTICE OF ASSESSMENT LIEN

1711600

SHEBOYGAN COUNTY, WI
RECORDED ON

10/10/2003 01:59PM

DARLENE J. NAVIS
REGISTER OF DEEDS

RECORDING FEE: 15.00
TRANSFER FEE:

STAFF ID 6
TRANS # 31000

OF PAGES: 3

Document Number

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5935 South Business Drive
Sheboygan, WI 53081

Parcel I.D. Number:

Recording Area

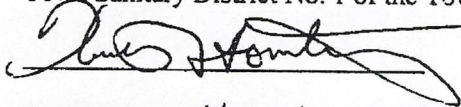
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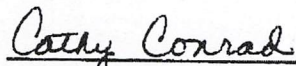
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Notice is hereby given this 21st day of April 2003.

Town Sanitary District No. 1 of the Town of Wilson, by:



Signature of Kenneth F. Sonntag
authenticated this 21st day of April, 2003.



Cathy Conrad, Town Clerk

This Instrument drafted by Attorney Kathryn M. Bullon.

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Description by: Ken Wolf, Earth Tech, Inc., April 1, 2003, revised April 24, 2003

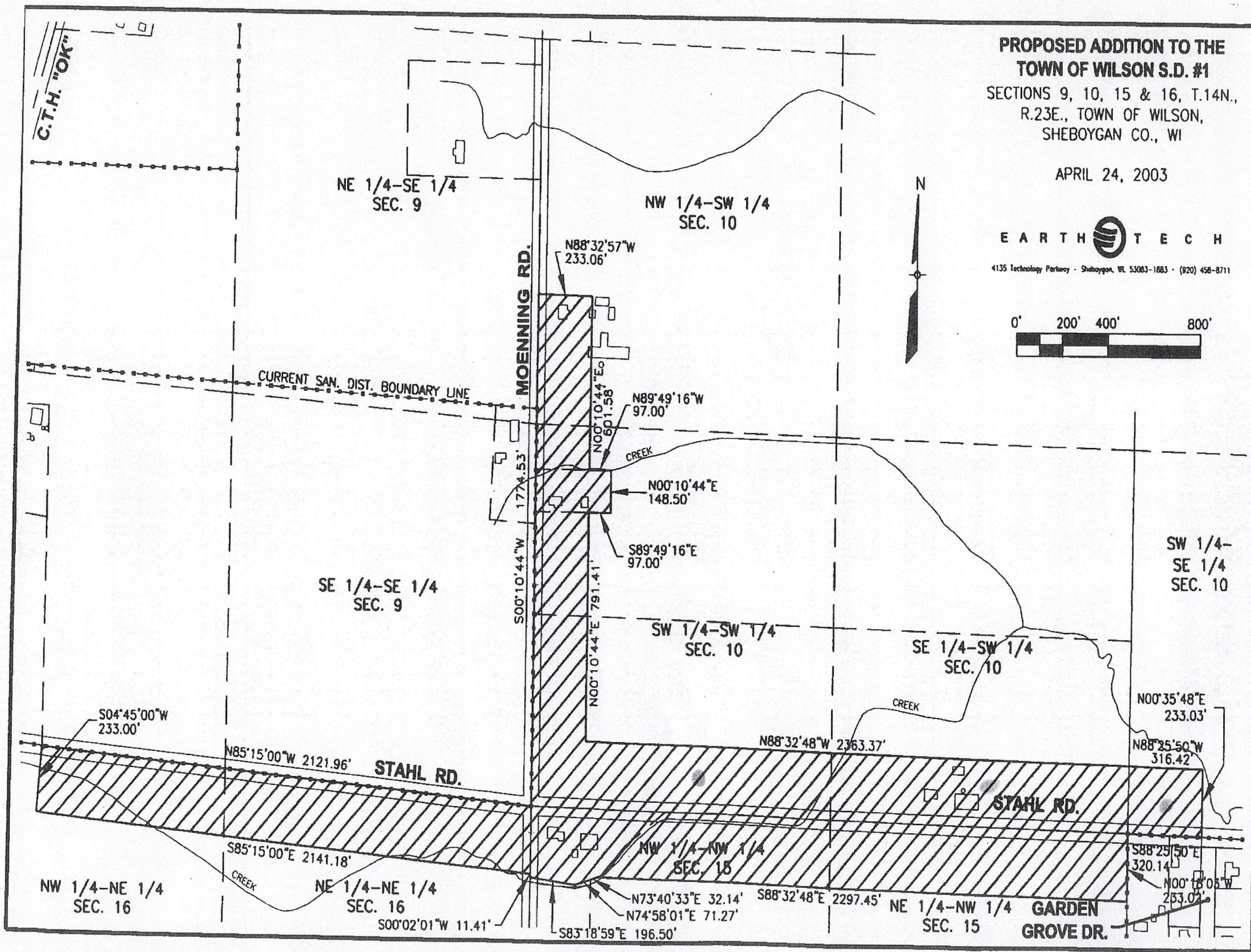
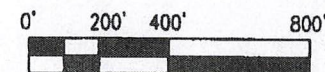
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APRIL 24, 2003

EARTH TECH

4135 Technology Parkway • Sheboygan, WI 53083-1883 • (920) 458-8711



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5935 South Business Drive
Sheboygan, WI 53081

Parcel I.D. Number:

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1711600

SHEBOYGAN COUNTY, WI
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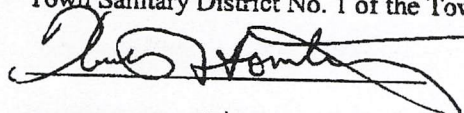
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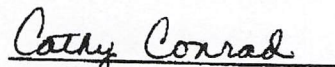
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Signature of Kenneth F. Sonntag
authenticated this 21st day of April, 2003.


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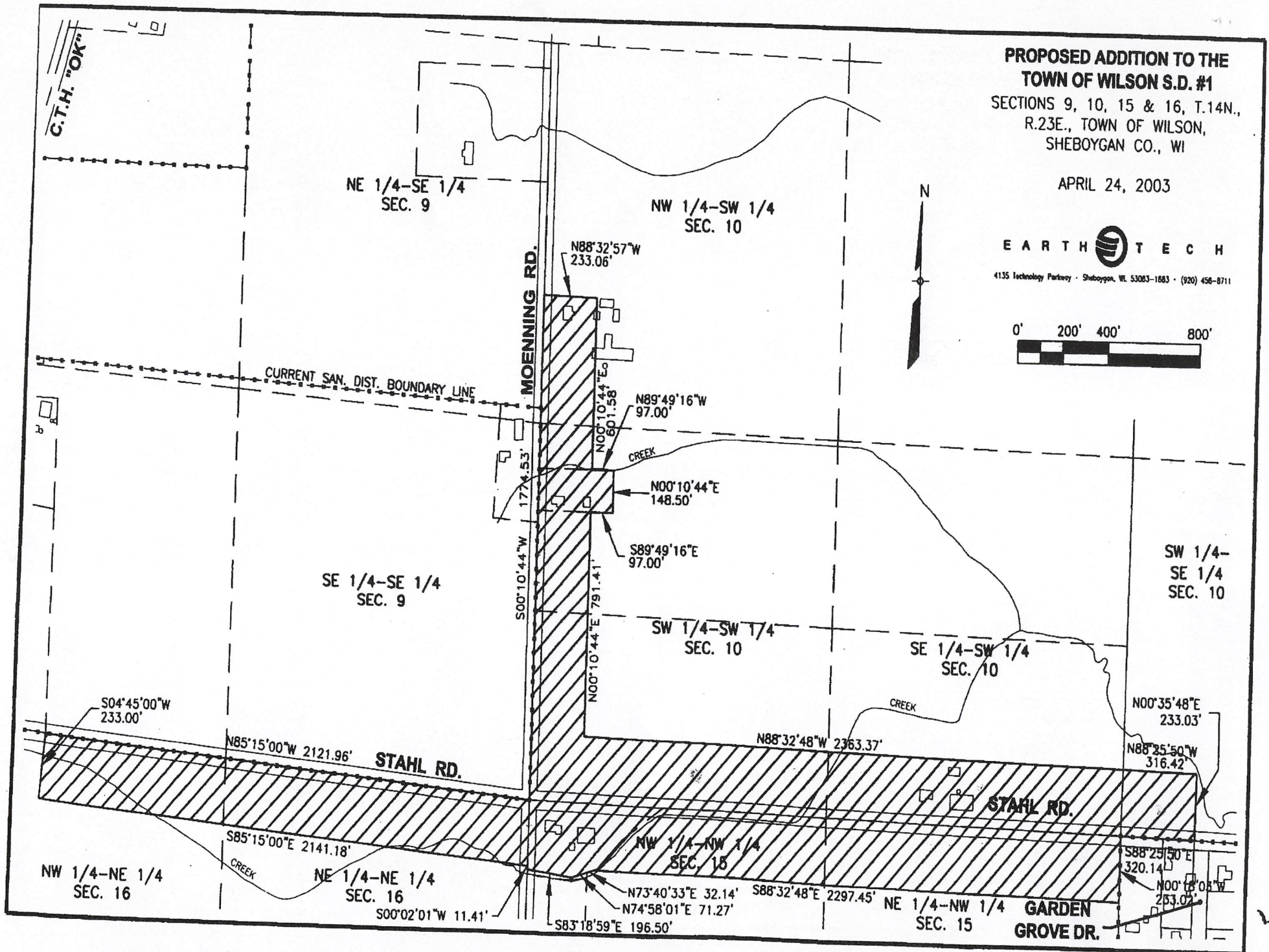
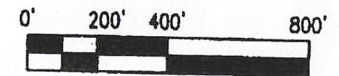
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SECTIONS 9, 10, 15 & 16, T.14N.,
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SHEBOYGAN CO., WI

APRIL 24, 2003

EARTH TECH
4135 Technology Parkway • Sheboygan, WI 53083-1883 • (920) 456-8711



FARM OPTIONS

 Lands that are actively engaged in farming and are zoned as Agricultural have an alternate method of payment of the special assessment indicated on the attached notice. This option is as follows:

If you own land that is agriculturally zoned and is currently under active agricultural use in addition to the above options, the following option is granted by the District. Payment of:

- (a) If you have a home or other connecting unit on farm one hundred (100) feet for each connecting unit (\$2,200.00).
- (b) Six hundred (600) feet plus connection charge.

The total of (a) and (b) shall be payable in ten (10) equal annual installments plus interest on the unpaid balance.

The balance shall be deferred and shall be paid on sale or development of any part of the farm lands covered under this assessment unless the land is sold or transferred to a member of the immediate family who continues to be actively engaged in the farming of the land.

If the land is sold to a nonfamily member or if to a family member who is not actively engaged in farming, the total unpaid assessment (deferred and installments) shall become due and payable. The deferred assessment shall be charged at a rate then being charged by the District for installation of sewers or \$22.00 per foot, whichever is greater. If the owner pays under Options 1, 2 or 3, the assessment will be charged at the current rate of \$22.00 as indicated on the assessment notice. The deferred assessment shall mean that part of the assessment exceeding six hundred (600) feet if no connecting home is located thereon or seven hundred (700) feet if a home is being connected. No interest will be charged on the deferred amount.

NOTE: FAILURE TO MAKE ELECTION WILL CAUSE THE FULL ASSESSMENT TO BE PAYABLE IN 10 EQUAL ANNUAL INSTALLMENTS PLUS INTEREST.

Please make choice of payment on assessment notice, sign and return as directed.

Exhibit

B