

April 30, 2026

Via email to:

Attorney Nathan Bayer - nbayer@CrivelloLaw.com
Village Clerk Katie Swieciak – clerk@villageofbigbend.gov
Village of Big Bend
2835 South Moorland Road
New Berlin, WI 53151-3743

***Re: Position Statement Objection to Proposed PUD and CUP
for Stage 1 of proposed Breck Sports Complex.***

Dear Attorney Bayer:

On behalf of Three Villages Association, U.A. (“TVA”) please accept the following position statement and objection for the record in the above matters. We request that in accordance with the Notice and Agenda for this evening’s meeting, the material be provided to all Village Board members for review before that meeting.

I. The Board has the authority to deny the PUD and the CUP

The Board is not required to approve either the PUD or the CUP. The PUD is a legislative determination, and is considered a form of zoning overlay. No property owner has a right to a rezoning. In addition, as described below, the proposed PUD allows for uses that are prohibited in the underlying base zoning and throughout the Village, which is contrary to the State zoning enabling statute.

Regarding the Conditional Use Permit, CUPs are ***not*** presumed to be acceptable. The Courts have confirmed that, “the presumption that the conditional use serves the public interest, does not exist in Wisconsin.” And that there is “no duty rested upon the objectors to establish their nonfulfillment. The burden, rather, rested upon [the applicant] to prove that it met the conditions. *See Delta Biological Resources v. Zoning Board of Appeals*, 160 Wis.2d 905, 912-13 (Ct.App.1991).

And so-called “Act 67” specifically provides that ***CUPs can be denied*** unless the applicant demonstrates that the proposed use satisfies all requirements and conditions:

2. The requirements and conditions described under subd. ***1.*** must be reasonable and, to the extent practicable, measurable and may include conditions such as the permit’s duration, transfer, or renewal. ***The applicant must demonstrate that the application and all requirements and conditions established by the Village***

relating to the conditional use are or shall be satisfied, both of which must be supported by substantial evidence.

See Wis. Stats. § 61.35(4e)(b)(emphasis added). This requirement is also codified in the Village's ordinances. See *Ord. § 16.25(A)(14)*.

Finally, statements based on facts and experience of neighbors are not speculative and is considered substantial evidence that may and must be considered in reviewing and deciding upon CUPs and PUDs. See *Eco Site LLC v. Town of Cedarburg*, 388 Wis.2d 375, 386 (Ct.App.2019).

Decisions on approvals such as these must be made on their merits and with a proper understanding of the applicable law, and not based on erroneous advice or understandings, such as that the failure to approve would amount to a taking of property without just compensation, or that state statutes require approval. Any assertions of that sort regarding this matter are inaccurate and unsupported by the applicable law as noted above.

II. The PUD is contrary to the state enabling statute, incomplete, and violates the Village's PUD ordinance.

The proposed PUD that is in front of the Board is a reduced 110-acre area that was voted on by the Plan Commission at its March 19, 2026 hearing and meeting. The proposed PUD is contrary to the state zoning enabling statute. State statute does allow PUD type districts to be established that include regulations specifically applicable only to the lands within the PUD. But these regulations must be *in addition* to those in the underlying base district, *not contrary* to them.

This concept was addressed by the Court of Appeals in *City of Waukesha v. Town Board of the Town of Waukesha*, 198 Wis.2d 592 (Ct.App.1995). The Court of Appeals in that case voided local ordinance that attempted to make a PUD a conditional use in any district. See *Town of Waukesha*, 198 Wis.2d at 604. The Court found that, "By failing to require that an approved ***PUD be in harmony with the zoning restrictions of the underlying district***, the ordinance allowed the Town Board to approve a PUD in any district." As part of its ruling, the Court of Appeals also confirmed that:

"the very essence of zoning is the territorial division of land into use districts ... and uniformity of use." *Id.* at 93, 503 N.W.2d at 271 (quoted source omitted). An ordinance which includes pervasive regulation of the use of land "must be surrounded with the substantive and procedural safeguards which zoning requires." *Id.* at 94, 503 N.W.2d at 272. Control over the use of property is a zoning control which can only be imposed by a comprehensive zoning ordinance which comports with statutory guidelines

See *Town of Waukesha*, 198 Wis.2d at 605.

The State statute imposes limitations on relaxing or waiving the requirements of the underlying base zoning when considering a PUD. PUD overlay zoning districts are described in the Zoning Code and Village Ord. §16.45.5. A key provision of that section requires as follows:

The Village, at its sole discretion, may waive or modify such other Code requirements as it may deem appropriate given the unique and particular circumstances of an individual project proposal, when it finds that such modification will enhance the overall coordination and efficiency of the proposed development and will not adversely impact public health, safety and welfare. Prior to exercising this discretion, the Village shall make a specific finding that the modification is consistent with the general character, size and proportion of existing buildings in the neighborhood, and that, considering the type and intensity of the proposed use, that the deviation from the underlying base district standards will not adversely impact surrounding properties.

See Village Ord. § 16.45.5 (E)(1).

Here, the findings required in order to deviate from the existing base zoning requirements have not been made nor can they reasonably be made. As the attached letters and documents show, nearby property values are already being negatively impacted. The property at W235S6385 Big Bend Drive has already lost \$59,900 in assessed value. *See attached letter from assessor and related information.*

In addition, two other examples of the exceptions that the developer is seeking demonstrate this point.

1. 85 foot high light poles.

The Village's Ordinance limits mounted lighting to 28 feet and provides as follows:

- 1)** Except as may be specifically waived or modified by the Planning Commission upon finding that a unique or site specific situation warrants it, all sites, buildings and developments shall comply with the following:
 - a)** No exterior lighting used for parking lots, recreational facilities, product display, or security shall be permitted to spill over onto operators of motor vehicles, pedestrians, and uses of land in the vicinity of light source.
 - b)** Orientation. No exterior lighting fixture shall be oriented so that the lighting element (or a transparent shield) is visible from a property in a residential district.
 - d)** Intensity of illumination. The intensity of illumination measured at the property line shall not exceed 0.5 footcandle.

j) Mounting Height, unless otherwise specifically waived or modified by the Planning Commission given the unique circumstances of a particular place, for post/pole mounted light fixtures shall be 28 feet maximum and for building mounted light fixtures shall be 15 feet.

The attached photos show an example of how the type of lights that are being planned for will impact neighboring properties and be contrary to the ordinance. *See Copy of photos attached.*

2. Seeking 70 foot high (or higher) building height.

Village Ord. § 16.41 limits building heights in the B-4 district to 45 feet:

5) Building height.

a) Principal structure-45 ft. maximum building height

See Village Ord. § 16.41(5). Other sections of the zoning ordinance confirm that height restrictions are to be strictly maintained at the maximums as allowed by the district-specific ordinance:

16.05 COMPLIANCE.

Except as otherwise specifically provided, the use, size, height, and location of buildings now existing or hereafter erected, converted, enlarged or structurally altered, the provision of the open space and the use of the land shall be in compliance with the regulations established herein for the district in which such land and/or building is located.

16.12 HEIGHT REGULATIONS.

(1) MAXIMUM HEIGHT RESTRICTED. In any district no building or structure shall be hereafter erected or structurally altered to a height in excess of that specified by the regulations for that district.

The proposed PUD is also deficient in several other respects, but based on the above circumstances, should not be approved by the Board.

III. *The proposed CUP does not meet the requirements of the ordinance*

The proposed CUP does not satisfy the Village's ordinances. State Statute (known as Act 67) requires that a proposed CUP may only be approved if the applicant agrees to meet and can satisfy both ordinance *requirements* and *conditions*. The key language of Acts 67 is noted above.

The facts in support of the CUP do not demonstrate or provide substantial evidence that the proposed use will satisfy the requirements of the CUP ordinance. Below are the requirements of the Village's conditional use ordinance and a description of the

issues and facts showing that the ordinance standard cannot be satisfied by the current proposal.

The Village ordinance requires as follows:

1. Evaluation. In making its recommendation, The Planning Commission **shall** evaluate the effect of the proposed use upon such things as, but not necessarily limited to:

a. The maintenance of safe and healthful conditions.

Attached are photos of recent and recurring flooding in the area of the proposed development. The stormwater drainage plan is incomplete and relies on infiltration to mitigate increased storm run-off. This is clearly inadequate.

b. Existing topography, drainage, and vegetative cover.

The effect on drainage will be to make it worse. A large amount of the property will be stripped of vegetative cover, the site drains into the adjacent community and will impact existing artesian groundwater wells and resources.

c. The compatibility of the use with other uses on adjacent properties.

The proposal will and already is reducing property values of adjacent residential homes. See letter from the Town of Vernon assessor and related information attached.

d. Existing and proposed vehicular and pedestrian traffic generation and circulation.

The current plans are only conceptual and incomplete. There is not a proper basis to evaluate this standard based on the applicant's submissions

e. The adequacy of existing and proposed parking areas and driveway locations.

Same as letter d above.

f. The adequacy of existing and proposed public utilities and other public services.

The applicant's materials state that both public and private utilities will be needed but provides no firm factual details beyond conceptual plans and promises to firm things up as the project proceeds. This is not sufficient.

g. The compatibility of the use with the Village's Comprehensive Plan.

The proposed use is incompatible with the Village Comprehensive Plan. This area calls for residential in all surrounding properties and on the bulk of the eastern portion of the subject site.

h. The suitability of the subject site for the type and density or intensity of the proposed use(s).

A massive sports complex with 70 foot high indoor facility and similar large hotel is well beyond the intensity of use for the property as it is currently used and the neighboring properties.

i. The creation of noise, traffic, odors or other conditions that may be detrimental to the public.

The information provided provides no assurance that light pollution and noise nuisance will be compatible with the adjacent properties. Photos of lights and the glare from them emitting from a similar local sports facility are attached as an example. No similar photos or examples were provided by the applicant.

See Ord. § 16.25 (A)(17)(a)(1)(a-i).

VI. Conclusion.

Uniformity and consistency of the actual use of land under a zoning code, as well as the processes used to amend and regulate zoning, is important for individual landowner/developers to ensure due process. In that same way it is equally important for adjacent property owners. Here, the property and due process rights of the adjacent property owners are not being properly considered and upheld.

For the reasons described above, none of the matters before the Board should be approved. This includes the proposed PUD and the proposed CUP.

Very truly yours

Electronically signed by Joseph R. Cincotta

Joseph R. Cincotta
Attorney for Three Villages Association, U.A.

cc: Village Clerk, Katie Swieczak

Assessor Village of Vernon

W249 S8910 Center Dr
Big Bend, WI 53103-0309

Phone: (262)542-3332
Email: magnanassessment@tds.net

April 11, 2026

MATTHEW J. WELTER
DOREEN M. WELTER
W235 S6385 BIG BEND DR
WAUKESHA WI 53189-9548

Re: Assessment of real estate at W235 S6385 Big Bend Dr in the Village of Vernon
Tax key number VNT 2022-998-003

Dear Matthew J. Welter:

I have reviewed the additional information you presented to us for further consideration and determined that the information provided does warrant a change in the assessment. As such, your assessment will be as follows:

Land	\$140,800
Improvements.....	<u>\$238,200</u>
Total	\$379,000

Thank you for providing this additional information. We strive to make all assessments fair and equitable.

Regards,



Cal Magnan
Assessor for the Village of Vernon

Here is substantial evidence of financial harm.

Pay Options Tax Bill Details **Property Details** Search

Tax Key: VNT 2022998003 -
 Tax Year: 2026 -

OWNER NAME AND MAILING ADDRESS

MATTHEW J WELTER
 DORFEN M WELTER
 W23556385 BIG BEND DR
 WAUKESHA, WI 53189-9548
[Click Here to Provide Updated Mailing Address](#)

W23556385 BIG BEND DR
 WAUKESHA, WI 53189-9548

LEGAL DESCRIPTION

PARCEL 2 CERT SURV 10230 VOL 95/266 REC AS DOC# 3390303 PT NW1/4 SEC 2 T5N R19E :: DOC# 432966 & DOC# 433323

ASSESSMENT STATUS

Assessment Year: 2026
 Assessment Status: ACTIVE
 Assessment Attributes: NONE
 Deeded Acres: 0.000

OWNERSHIP

DEED
 AFFIDAVIT

ASSESSMENT INFORMATION

Assessed By: CAL MAGNAN
 262-542-3332
 MAGNANASSESSMENT@TDS.NET
 Board of Review Date: 5/18/2026

Links to WI Dept of Revenue R
 Guide for Property Owners
 Board of Review Calendar

PROPERTY VALUES

Property Class	Acres	Land	Impr
RESIDENTIAL	1.000	\$140,800.00	\$29
Total:	1.000	\$140,800.00	\$29

The property values displayed are not yet certified by the Board of Review. Please utilize the information shown above to contact the municipal Assessor during the property assessment process.

DISTRICTS

District Type	District Name
VILLAGE	VILLAGE OF VERNON
SCHOOL	SCHOOL REFERENDUM
SCHOOL	SCHOOL REFERENDUM 3856
SCHOOL	MUKWONAGO SCHOOL 3822
SCHOOL	SCHOOL REFERENDUM 3857
TCDB	WAUKESHA TECH COLLEGE
SEWER	STORM WATER
UTIL	GARBAGE / RECYCLING

This program accesses data from databases maintained by several County Departments and Local Municipalities. There may be inconsistencies in purpose for which it is maintained. Due to variances in sources and update cycles, there is no guarantee as to the accuracy of the data. For questions contact the County Treasurer's office at (262)540-7029.

For Tax Listing and GIS Viewer related issues, please see our FAQs [click here](#). If you still have tax listing questions, contact: [tax](#)

----- Forwarded message -----
 From: **Matthew Welter** <matthew.welter@gmail.com>
 Date: Mon, Apr 27, 2026 at 5:26 PM
 Subject: Re: Assessment adjustment

On April 8th at 2pm I met with Call Magnan the Waukesha County Assessor to go over my property assessment because I had been receiving an overabundance of unsolicited phone calls asking me to sell my property at W235S6385 Big Bend Rd. The highest amount offered after negotiation was way less than the assessment and the reason given was because of the impending buildout of the Breck Athletic Complex from the prospective realtors. I brought the map of the proposed breck development to the meeting with Cal and showed him the proximity of the complex to my property. He acknowledged that there would be a significant reduction in my property value and we mutually agreed that a reduction in the assessed value was appropriate. The final reduction from \$438,900 to \$379,000 was provided by Cal in a letter (previously attached) for a net loss of my property value of \$59,900.

On Mon, Apr 27, 2026 at 5:06 PM Matthew Welter <matthew.welter@gmail.com> wrote:

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Matt

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Matt

April 20, 2026

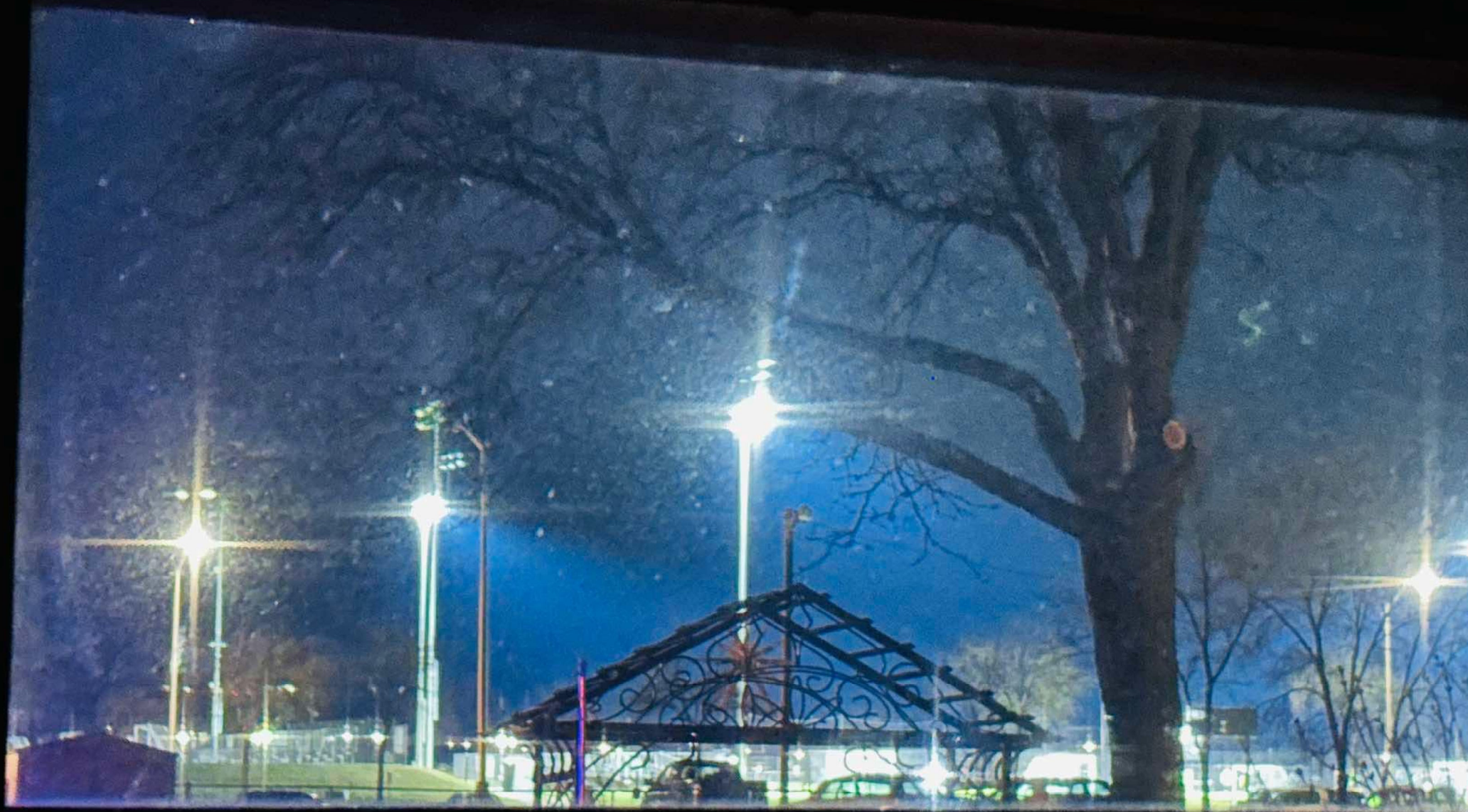
Jackie Trimborn
W235 S6720 Salem Ct
Waukesha WI 53189

Jackie,

This letter is a follow up to our telephone conversation regarding the proposed Breck sports complex development. I believe that the homes located in the Sunset Farms subdivision and on Big Bend Road north of Skyline Ave will get the greatest impact from the development. The nearest example I have of a similar situation is in the Town of Norway in Racine County. Along Eight Mile the north side of the road is a landfill and on the south side of the road I have new homes being built. The lot sales indicate a negative 25 % in price paid versus a similar sized lot located farther away from the landfill. The impact of the Breck development on Vernon property values can only be measured after sales of the affected homes take place. I have had a conversation with one of the homeowners who lives on the east side of Big Bend Rd. He was approached by the developers with a purchase offer which he declined. He has chosen to stay and let them build around his property. I believe the development will have a negative effect on the surrounding property values. If you have any questions or are in need of any additional information please feel free to contact me.

A handwritten signature in cursive script that reads "Cal Magnan".

Cal Magnan
Assessor Village of Vernon

















08/10/25