



November 22, 2021

Mr. Patrick Yates, Trustee  
Village of Lannon  
20399 W. Main Street  
Lannon, WI 53046

RE: Review of the Village's Water Connection Policies and Special Assessments for the 2021 Water Service Extension Project

Dear Mr. Yates:

I am hereby transmitting this written report summarizing my review and findings regarding the Village's policies for connection to the water system and the special assessments levied for the 2021 water service extension project.

The opinions contained in this report are not intended to be legal opinions. These are my opinions as a practitioner in the field who has worked with Wisconsin municipalities to implement special assessments and other charges for public improvements and services for the past 24 years, and who is well versed in Wisconsin statutes and administrative code, case law, and Public Service Commission oversight of water utilities. The Village should consult with the Village Attorney regarding any findings or recommendations contained in this report.

I was happy to assist the Village in this matter. Please feel free to contact me with any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "Christine DeMaster".

Christine DeMaster  
Principal/Senior Consultant  
**TRILOGY CONSULTING, LLC**

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# **Review of Village Policies for Connection to Water and Charges for the 2021 Water Service Extension Project**

Prepared for the

**Village of Lannon**

By Trilogy Consulting, LLC  
November 2021

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## EXECUTIVE SUMMARY

Under Wisconsin Statutes, a city, town, or village may construct or expand a municipal public water system. The portion of the water system that is considered public and is owned and maintained by a municipal water utility includes wells or other sources of supply, treatment, pumping, and storage facilities, water mains, hydrants, meters, the portion of the service laterals from the main to the property line or curb stop, and any equipment or vehicles owned and used by the water utility. Private service laterals, such as the lateral from the curb stop to a building, are considered private property improvements, and are not owned or maintained by a municipal water utility.

Wis. Stats. 281.45 authorizes municipalities to require buildings used for human habitation and located adjacent to a sewer or water main to connect to the either or both. Under this statute, municipalities may also impose penalties or cause the connection to be made, with the expenses imposed on the property as a special tax.

Under Wis. Stats. 66.0703, a city, town, or village may levy special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement, including municipal water system improvements. If an assessment is an exercise of the 'police power' of the municipality, the municipality must show that the property is benefited, and the assessment must be made on a reasonable basis as determined by the governing body of the municipality.

For assessments made under the police power, Wisconsin Courts have ruled that assessments do not have to be limited to the amount of the value received by the benefiting properties and the value accruing to the property is not part of the reasonableness test. The municipality must simply show that the property is receiving special benefits and that the assessments were made on a reasonable basis for similarly situated properties. Special benefits from municipal public water supply do not have to be based on any immediate health or safety issues with the water quality of private wells on the assessed properties.

To be reasonable, the municipality's adopted assessment plan must be fair and equitable for similarly situated properties and such that it will bring about an assessment in proportion to the benefits accruing. Municipalities may use a variety of methods to apportion costs between properties. No one method is reasonable in all situations. The method used should reflect both the circumstances of the area to be assessed and the relative amount of benefit received by each property.

A careful review was conducted of the following documents related to the Village's policies for connection to water service and charges for the water service extension project undertaken in 2021: 1) an ordinance repealing and replacing §74-157 of the Village of Lannon Code of Ordinances Regulating Compulsory Water Main Connections; 2) the October 2020 special

assessment report prepared by Strand Associates; and 3) notice letters to property owners in the project area, as well as other properties that would be required to connect under the amended §74-157, dated October 23, 2020.

The review of these documents leads to the following conclusions:

1. The Village appropriately exercised its authority under Wisconsin Statutes to require mandatory connection to the Village water system for buildings used for human habitation that are located adjacent to a water main.
2. The adoption of §74-157 of the Village Code requiring mandatory connection to the Village water system, providing for penalties for failure to comply, and adopting general policies with respect to special assessments does not, by itself, levy special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement. Therefore, the Village was not required to follow the procedural requirements of Wis. Stats. 66.0703 to adopt this ordinance.
3. Village of Lannon Municipal Code §74-157(d) contains an outdated reference to Wisconsin Statutes that should be amended.
4. The Village imposed special assessments for the 2021 water service extension project as an exercise of its police powers. Therefore, the amount of the assessments must be determined on a reasonable basis but need not be limited to the value of the benefit to each property.
5. The installation of water main confers special benefits on the properties assessed by the Village that are not available to other properties in the Village where there is no water main. This benefit does not have to be tied to the water quality of the private well currently serving the property.
6. The method of apportioning costs between benefited properties on the basis of equivalent meters is reasonable and proportionate to the relative amount of benefit received by each property.

## **AUTHORITY FOR CONSTRUCTION OR EXPANSION OF A MUNICIPAL PUBLIC WATER SYSTEM AND REQUIREMENT TO CONNECT**

Under Wisconsin Statutes and Administrative Code, a city, town, or village may construct or expand a municipal public water system. More than 575 municipalities in Wisconsin own and operate municipal public water systems.

The portion of the water system that is considered public and is owned and maintained by a municipal water utility includes wells or other sources of supply, treatment, pumping, and storage facilities, water mains, hydrants, meters, the portion of the service laterals from the main to the property line or curb stop, and any equipment or vehicles owned and used by the water utility. Private service laterals, such as the lateral from the curb stop to a building, are considered private property improvements, and are not owned or maintained by a municipal water utility. A

few utilities require customers to own and maintain the entire service lateral all the way to the connection with the water main. Utilities may generally not use utility revenues to fund private service laterals. A limited exception to this rule is Wis. Stats. 196.372, which allows utilities to provide financial assistance to private property owners to defray up to 50 percent of the cost of replacing private service lines containing lead, subject to conditions and special approval by the Public Service Commission of Wisconsin (PSCW).

Wis. Stats. 281.45 authorizes municipalities to require, by ordinance, that buildings used for human habitation and located adjacent to a sewer or water main must connect to either or both. If anyone fails to comply after a 10-day written notice from the municipality, the municipality may impose a penalty or cause the connection to be made, and shall assess the expense to the property as a special tax. The property owner may request installment payments of up to five annual installments and the municipality may charge interest of no more than 15 percent on the unpaid balance. The unpaid balance is a special tax lien on the property.

It is common for municipalities to enact mandatory connection ordinances. Examples of municipalities in the area that have mandatory connection ordinances include the Villages of Hartland, Menomonee Falls, Sussex, and Waterford, and the City of Brookfield.

### **AUTHORITY AND REQUIREMENTS FOR THE USE OF SPECIAL ASSESSMENTS**

Wisconsin municipalities commonly impose assessments on properties newly connecting to their water or sewer system to pay for the capital costs of constructing municipal sewer and water infrastructure.

Under Wis. Stats. 66.0703, a city, town, or village may levy special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement. If an assessment is an exercise of the ‘police power’ of the municipality, the municipality must show that the property is benefited, and the assessment must be made on a reasonable basis as determined by the governing body of the municipality. ‘Police power’ is the broad power given by the Wisconsin Legislature to cities, villages, and towns to legislate for the purposes of health, safety, and welfare of the public.

Wis. Stats. 66.0703 requires that the amount assessed against any property for any work or improvement which does not represent an exercise of the police power may not exceed the value of the benefits accruing to the property. However, this requirement does not apply to an assessment that is an exercise of the police power.

For assessments made under the police power, Wisconsin Courts have ruled that assessments do not have to be limited to the amount of the value received by the benefiting properties and the value accruing to the property is not part of the reasonableness test. The municipality must simply show that the property is receiving special benefits and that the assessments were made

on a reasonable basis for similarly situated properties. The reasonable basis requirement does not limit the assessment to the value of the benefit to the property; it only requires that the assessment must be reasonable and apportioned fairly and equitably among property owners. *Gelhaus & Brost, Inc. v. City of Medford*, 144 Wis.2d 48, 52, 423 N.W.2d 180 (Ct. App. 1988).

The statute does not define what constitutes a special benefit. The Wisconsin Court of Appeals has defined special benefits as an uncommon advantage accruing to the property owner in addition to the benefit enjoyed by other property owners. *Goodger v. City of Delavan*, 134 Wis. 2d 348, 396 N.W.2d 778 (Ct. App. 1986). Connection to a sewer system has been defined as one example of a special benefit. Special assessments for a sewer interceptor levied by the Village of Germantown on all future users of the sewer system were upheld by the Wisconsin Court of Appeals. In its ruling, the Court stated “Additionally, here it is obvious that the future users were benefited by the assessment because they could not be connected to sewer service without the interceptor.” *CIT Group v. Village of Germantown*, 163 Wis. 2d 426, 471 N.W.2d 610 (Ct. App. 1991). Special benefits from municipal public water supply do not have to be based on any immediate health or safety issues with the water quality of private wells on the assessed properties.

The statute also does not define what constitutes a reasonable basis. The Wisconsin Supreme Court has ruled that “to be reasonable, the municipality's adopted assessment plan must be fair and equitable and such that it will bring about an assessment in proportion to the benefits accruing.” *Gelhaus & Brost, Inc. v. City of Medford*, 144 Wis.2d 48, 52, 423 N.W.2d 180 (Ct. App. 1988).

As described below, municipalities use a variety of methods to apportion assessed costs fairly and equitably among property owners. The method used should be adapted to the circumstances to ensure that properties are assessed in relative proportion to the benefit received by each property. In *Peterson v. New Berlin*, for example, the court disagreed that the front foot method is reasonable per se. The court found that a per unit method was more reasonable than the front foot method in a situation where residential lots varied substantially in the amount of front footage, but all received the same benefit from sewer and water improvements. *Peterson v. New Berlin*, 154 Wis. 2d 365, 371, 453 N.W.2d 177 (Ct. App. 1990)

Some municipalities adopt a special assessment ordinance covering the municipality's general policies with respect to special assessments. Examples of area municipalities that have a special assessment ordinance include the Villages of Menomonee Falls and Mukwonago. The purpose of a special assessment ordinance is to alert property owners of the municipality's general practices with respect to special assessments and to provide a framework for the governing body so that assessments are levied in a similar manner from one project to another. Special assessment ordinances of this nature do not in themselves constitute the levying of special assessments, so a municipality is not required to follow special assessment procedures to adopt the ordinance.

The special assessment procedure must be followed for specific assessments subsequently levied for specific projects in accordance with the ordinance and Wisconsin Statutes.

## **METHODS OF APPORTIONING SPECIAL ASSESSMENT COSTS**

The statutes do not specify how costs are to be apportioned between properties, only that it be done on a reasonable basis. Because there may be wide variation in parcel size, width, land use, and water or sewer demand within some assessment areas, municipalities have developed a variety of methods to ensure that assessments are reasonable in proportion to the benefit received by each property. Common methods of determining assessments for water mains are described below:

*Front Footage* – this method assesses properties based on the feet of the property fronting the water main. It is a reasonable approach when the water mains serve parcels with the same or similar land use where the amount of front footage and parcel size is similar between parcels or is proportional to the potential use of the public improvements.

*Unit Method* – this method assigns the same cost to each parcel and is a reasonable approach for an area with parcels that are approximately the same size with same land use, such as a residential subdivision.

*Area* – this method assesses costs based on the size of each parcel in acres or square feet. This is a reasonable approach when parcels vary substantially in size and amount of water demand, and where water demand is expected to be proportionate to parcel size. For example, this may be an appropriate approach when assessing a mix of existing developed parcels and large tracts of land that could be subdivided and developed in the future.

*Residential Equivalent Connections (RECs) or Equivalent Meters* – this approach assesses properties in proportion to the relative amount of water demand from each property. The residential equivalent connections approach bases the assessment on the amount of estimated water demand for each property as compared to an average residential connection. The equivalent meters approach establishes assessments based on the size of the water meter for each connection and the amount of water that can be supplied by the meter relative to a standard 5/8-inch or 3/4-inch residential meter. This approach is appropriate in areas with a mix of land uses and parcel sizes and widths where the size of a property or the width of the property at the street may not be proportional to the amount of water used by the property.



## **VILLAGE POLICIES FOR CONNECTION TO WATER AND CHARGES FOR THE 2021 WATER SERVICE EXTENSION PROJECT**

A careful review was conducted of the following documents related to the Village's policies for connection to water service and charges for the water service extension project undertaken in 2021: 1) an ordinance repealing and replacing §74-157 of the Village of Lannon Code of Ordinances Regulating Compulsory Water Main Connections; 2) the October 2020 special assessment report; and 3) notice letters to property owners in the project area, as well as other properties that would be required to connect under the amended §74-157, dated October 23, 2020.

### The 2021 Water Service Extension Project

The Village is nearing completion of a project to construct 14,827 feet of new water main extensions 8 inches and 12 inches in diameter, and 1,471 feet of 6-inch diameter water main, along with the associated hydrants and public service laterals from the main to the curbstop. The project also includes acquiring and improving a well and well facility previously owned by the Lannon Estates mobile home park to serve as a second source of supply. The location of the new mains is shown on the "Special Assessment & Impact Fee Zone Map" in the October 2020 special assessment report.

The total cost of the project undertaken by the Village, including engineering, construction management, legal services, associated support services, and contingency, was estimated at \$8,916,000. A portion of the cost of the water mains, public service laterals, and hydrants was assessed to properties adjoining the new water mains. The total cost of these improvements was estimated at \$8,323,000. The Village has been awarded a grant from the United States Department of Agriculture (USDA) in the amount of \$3,493,000 for the project. The Village chose to use the entire amount of the grant funds to reduce the amount charged to adjacent properties by approximately 42 percent.

### Mandatory Connection Requirement

A condition of the USDA grant, as listed in the April 15, 2020, letter from the USDA to the Village, was that the Village's water system ordinance include a mandatory connection requirement for properties adjacent to water main. An ordinance to repeal and replace §74-157 of the Village Code was adopted in September 2020.

The previous ordinance required connection to the water system but allowed the Village Board to defer the connection requirement and to defer special assessments as long as no use is made of the public water improvements by a property. The ordinance also imposed a penalty for properties that do not comply with the connection requirement. The penalty was set at 95 percent of the minimum quarterly charge for water service normally provided to a property having similar use. If not paid, the penalty was to be collected as a special assessment on the

property pursuant to Wis. Stats. 66.60(16). This was a subsection of the special assessment statute that allowed municipalities to impose special charges on properties for current services. It did not require the resolutions, report, notice, and public hearing required for imposing special assessments for public improvements.

The amended ordinance requires buildings capable of being used for human occupation to connect to an adjacent water main within six months of the main becoming operational and imposes a penalty for failure to connect. The ordinance retains the penalty equal to 95 percent of the minimum quarterly water service for a property with a similar use and provides that any unpaid penalties will be collected as a special assessment pursuant to Wis. Stats. 66.0703. The general policies for special assessments were amended to prohibit deferral of water assessments but allow the Village Board to determine installment payments and charge interest on special assessments. The ordinance also asserts that any special assessments levied will be a lien on the property. The ordinance does not specify how many installment payments would be allowed or what interest the Village would charge on any special assessments, only that the Village Board may determine these issues, presumably as part of the special assessment process each time the Board levies assessments.

It should be noted that Wis. Stats. 66.60 was renumbered as §66.0703. Wis. Stats. 66.60(16) was removed from Wis. Stats. 66.0703, renumbered as §66.0627, and amended to limit the types of services for which municipalities may impose special charges. Therefore, the reference to Wis. Stats. 66.0703 in §74-157(d), while it reflects the renumbering of §66.60 to §66.0703, does not appear to reflect the original intent for collection of any penalties.

#### Private Property Improvements to Connect to the Water System

Private property improvements needed to connect to the Village water system, including service laterals from the curbstop to the building, any plumbing modifications within buildings, or private well abandonment, are not included in the improvements being constructed by the Village. This work and the associated costs are the responsibility of the property owners.

The Village entered into a contract with Mid-City Corporation to perform this work for property owners; however private property owners could also select their own contractor. The Village secured grant funding through the Waukesha County Community Development Block Grant (CDBG) program and the Waukesha Community Foundation Village of Lannon Quarry Fund (Quarry Fund) to pay for the cost of this work on behalf of private property owners who use the Village's selected contractor, sign an agreement making them a third-party beneficiary of that contract, cooperate with the contractor in providing access to their property, and apply for a WI DNR or Waukesha County well abandonment grant if eligible. Property owners who did not wish to sign this agreement could make their own arrangements for work on their property; however, they would not be eligible to receive grant funds.

### Special Assessments

The Village had a special assessment report prepared by Strand Associates for the public water system improvements, in accordance with Wis. Stats. §66.0703(5), dated October 2020. Letters regarding the assessments were sent to property owners on October 23, 2020. The letters provided notice of the proposed special assessments, other costs to the property owner including applicable impact fees and private property improvements, notice of the November 5, 2020, public hearing on the assessments, notice of the requirement to connect to the Village's water system, and an agreement that the property owners could sign if they elected to use the Village selected contractor and receive grant funding secured by the Village for private property improvements.

A similar letter and packet were also sent to the owners of 54 properties that were not within the project area and were not assessed but would be required to connect to existing water main under §74-157 of the Village Code. These property owners were also offered the option to use the Village's selected contractor and obtain grant funds for their private property improvements.

The special assessment report was reviewed to determine if the Village met the substantive requirements of statutes as clarified by court decisions, namely that the properties proposed to be assessed are benefited and that the costs are apportioned between properties in a fair and equitable manner.

The improvements for which special assessments were imposed include the water mains, hydrants, and public service laterals from the main to the curbstop. The total amount assessed was \$4,830,000 (\$8,323,000 of total costs minus \$3,493,000 of USDA grant funds).

The area that the Village identified as benefited by the water main extensions includes 172 individual properties plus Lannon Estates. These properties are shown in pink and purple on the "Special Assessment and Impact Fee Zone Map" in the special assessment report and are all adjacent to and will be able to connect to the new water main. The properties include a mix of land uses, including single family residential lots, vacant lots, and commercial and industrial properties.

Two vacant residential properties adjacent to the water mains will not have a service lateral installed and were not assessed, as they are owned by the adjoining residential property owner and have been combined via Certified Survey Map. A third such vacant parcel will have a lateral installed and receive an assessment because the owner decided to keep it as a separate buildable lot.

Three developed commercial properties with no plumbing will not have a public service lateral installed at this time. These properties will be assessed for the water main, but not the cost of the public service laterals. When these properties install plumbing in the future, the property

owner will be responsible for the entire cost of installing the public portion of the service lateral as well as the private lateral on their property.

The Village imposed the special assessments as an exercise of police power as permitted under Wis. Stats. §66.0701(2), asserting that the project promotes the health, safety, and welfare of the public as defined in Wis. Stats. §62.11(5). The assessment report described a history of private wells in the Village being contaminated with coliform bacteria, including *E. coli*, dating back to 1958, and the fact that many wells in the Village are likely out of compliance with DNR codes for well casings in the area due to the high potential for contamination. The benefits to the assessed properties were stated as “the provision of safe, reliable, municipal drinking water which alleviates the concern over property owner’s consuming private well water contaminated with *E.coli* and coliform bacteria.” The report also noted that public municipal water supply will benefit residents selling their homes.

The Village selected the equivalent meter basis for apportioning costs between properties. Under this approach, each property is assessed based on the size of the water meter installed to serve the property. A residential sized meter (5/8-inch or 3/4-inch) is charged for one equivalent meter. Larger sized meters are charged for a larger number of equivalent meters based on the capacity of the meter, in gallons per minute, compared to a residential meter. All the properties in the assessment area are expected to install a 5/8-inch or 3/4-inch meter, except for Lannon Estates, which will install a 3-inch meter and be assessed for 20 equivalent meters.

## FINDINGS

Careful review of the ordinance amending §74-157 of the Village Code, the October 2020 special assessment report, and the October 23, 2020, notice letters to property owners leads to the following conclusions:

1. The Village appropriately exercised its authority under Wis. Stats. to require mandatory connection to the Village water system for buildings used for human habitation that are located adjacent to a water main.
2. The adoption of §74-157 of the Village Code requiring mandatory connection to the Village water system, providing for penalties for failure to comply, and adopting general policies with respect to special assessments does not, by itself, levy special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement. Therefore, the Village was not required to follow the procedural requirements of Wis. Stats. 66.0703 to adopt this ordinance.
3. Village of Lannon Municipal Code §74-157(d) contains an outdated reference to Wisconsin Statutes that should be amended.
4. The Village imposed special assessments for the 2021 water service extension project as an exercise of its police powers. Therefore, the amount of the assessments must be

determined on a reasonable basis but need not be limited to the value of the benefit to each property.

5. The installation of water main confers special benefits on the properties assessed by the Village that are not available to other properties in the Village where there is no water main. This benefit does not have to be tied to the water quality of the private well currently serving the property.
6. The method of apportioning costs between benefited properties on the basis of equivalent meters is reasonable and proportionate to the relative amount of benefit received by each property.

The Village appropriately exercised its authority under Wis. Stats. to require mandatory connection to the Village water system for buildings used for human habitation that are located adjacent to a water main.

The plain language of Wis. Stats. 281.45 allows the Village to require connection of buildings used for human habitation to adjacent water main. Mandatory connection requirements may be imposed by ordinance and there are no requirements for notice to property owners or a public hearing prior to adoption of the ordinance. The Village required mandatory connection to the Village water system by amending its prior ordinance to repeal the discretion of the Village Board to defer the connection requirement.

The Village's ordinance requiring mandatory connection to the Village water system, providing for penalties for failure to comply, and adopting general policies with respect to special assessments does not have the effect of levying special assessments upon property in a limited and determinable area for special benefits conferred upon the property by any municipal work or improvement. Therefore, the Village was not required to follow the procedural requirements of Wis. Stats. 66.0703 to adopt this ordinance.

Adoption of the ordinance repealing and replacing §74-157 of the Village Code did not create a lien of special assessment on any property in the Village for any municipal work or improvement.

The ordinance does not identify any specific municipal work or improvement for which special assessments are imposed, or the specific properties that are benefited by any improvement. The ordinance does not specify or require that the 2021 project or any future water main extension projects will be assessed to any properties. The Village subsequently followed the procedures required under Wis. Stats. 66.0703 to assess properties for the 2021 water service extension project, indicating that the intent of §74-157 was not to effectuate the levying of special assessments for the project.

The ordinance also applies equally to all properties in the Village that are adjacent to water main previously constructed, as well as properties to which water main may be extended in the future, not just properties that were assessed for the 2021 water service extension project.

The private property improvements that must be made to comply with this ordinance do not constitute special assessments as defined under Wis. Stats. 66.0703. The Village is not undertaking these private property improvements, is not paying for these improvements, and will not own, operate, or maintain these improvements. The Village did secure grant funding for private property improvements and selected a contractor to perform these improvements for property owners who agreed to use the selected contractor and receive grant funding. However, the Village made it clear in communications with property owners that these improvements were the responsibility of the private property owner and that property owners could elect to provide and pay for their own contractor to complete the improvements needed to connect to the Village water system. Therefore, the Village did not impose special assessments for these improvements.

The ordinance requires that the owner of a property that fails to comply with the requirement to connect to the Village water system shall pay the Village a penalty. However, this is a penalty, not an assessment for a benefit conferred on the property. Further, the amount of the penalty is not tied to the cost of any municipal work or improvement specifically benefitting the property. Rather, it is 95 percent of the minimum amount that the property would be expected to pay for water service if it were connected (charges which include the cost of operation and maintenance, depreciation, and return on investment for the entire water system).

Village of Lannon Municipal Code §74-157(d) contains an outdated reference to Wisconsin Statutes that should be amended

As noted above, the previous version of §74-157(d) provided for the penalty for failure to connect to be collected pursuant to Wis. Stats. 66.60(16), which was a subsection of the special assessment statute that allowed municipalities to impose special charges on properties for current services. That provision is no longer part of the special assessment statute under Wis. Stats. 66.0703 (renumbered) and the costs for which municipalities may impose special charges have been limited.

The current ordinance provides for the Village to collect any penalties under Wis. Stats. 66.0703. However, as noted above the penalty is not a public work for which the Village may levy an assessment.

It is recommended that §74-157(d) be amended to use the language in Wis. Stats. 281.45, which provides the following:

“If any person fails to comply for more than 10 days after notice in writing the municipality may impose a penalty or may cause connection to be made, and the expense thereof shall be assessed as a special tax against the property. Except in 1st class cities, the owner may, within 30 days after the completion of the work, file a written option with the municipal clerk stating that he or she cannot pay the amount in one sum and asking that it be levied in not to exceed 5 equal annual installments, and the amount shall be so collected with interest at a rate not to

exceed 15 percent per year from the completion of the work, the unpaid balance to be a special tax lien.”

The ordinance does not currently allow for the Village to cause the connection to be made; the Village could continue to impose a penalty only or could consider adding the option of causing the connection to be made.

The assessments were imposed as an exercise of police powers; therefore, the amount of the assessment is not limited to the value of the benefit to each property

The special assessment report clearly states, on page 1-4, that the Village is using the police power as the basis for the assessments. The police power, as described in Wis. Stats. §61.34(1), allows villages broad powers to act for the good order of the Village, for its commercial benefit, and for the health, safety, welfare, and convenience of the public. The construction of municipal public water systems for the delivery of safe drinking water is widely accepted as an appropriate use of the police power. The ability of a village to use the police power to construct or expand public municipal water systems and assess properties that connect to the system does not depend on the presence of a known current water quality issue in private wells. Therefore, the Village could have exercised its police powers for this purpose even if there were no concerns about *E. coli* in private wells.

As described above, Wis. Stats. §66.0703(1)(b) does not require special assessments imposed as an exercise of the police power to be limited to the value of the benefit to the assessed properties, and Wisconsin courts have affirmed this principal.

The installation of water main confers special benefits on the properties assessed by the Village that are not available to other properties in the Village where there is no water main. This benefit does not have to be tied to the water quality of the private well currently serving the property.

All the properties that were assessed are adjacent to the new water main for which the assessments were imposed and may connect to that water main. As noted above, Wisconsin Courts have noted that the ability to connect to a sanitary sewer system confers a special benefit on properties. The situation here is similar in that without the construction of the new water main, these properties could not connect to the Village water system. Other properties in the Village that are not adjacent do not have the ability to connect to this water main and do not have that benefit. Therefore, the installation of this water main confers special benefits on the assessed properties.

There is no requirement under Wisconsin Statutes that the property owners request or approve the construction of the public improvements, or that the properties have an immediate health or safety threat to their private wells, for them to be considered benefited by the improvements.



The method of apportioning costs between benefited properties on the basis of equivalent meters is reasonable and proportionate to the relative amount of benefit received by each property.

As described above, there are several methods used by Wisconsin municipalities to apportion costs between properties. To comply with Wis. Stats., the method chosen should result in a fair and equitable distribution of costs between properties based on the proportionate amount of benefit received by each property.

In this case, the assessed properties vary widely in the size and shape of the parcels. For example, single family residential parcels range in size from a quarter acre to 2.8 acres with front footage varying from 40 feet to 400 feet. Most of the properties are residential or low water use commercial properties. These properties are expected to have relatively similar water demand and therefore similar benefit from connecting to the Village water system. However, the Lannon Estates property will serve many mobile home residential users from a single connection to the Village water system and is therefore collectively expected to have more water demand than other individual properties.

The use of equivalent meters to apportion costs is reasonable in this case. The front foot method would not be reasonable given the widely varying amount of frontage of the assessed properties relative to their benefit from the water main. The unit method would also be unreasonable since Lannon Estates will clearly use more water and have more benefit than other properties. The size of the water meter installed for a property limits the rate at which the property can take water, so it provides a reasonable measure of the potential amount of water that can be used. This method is similar to the Residential Equivalent Connection method but has the advantage of being more straight forward and less subjective than attempting to estimate exact water use before a property is connected.