CITY OF MENASHA COMMON COUNCIL WORKSHOP First Floor Conference Rooms 100 Main Street Wednesday, March 16, 2022 6:00 PM AGENDA

- A. WELCOME
- B. PUBLIC COMMENTS ON ANY MATTER LISTED ON THE AGENDA (five (5) minute time limit for each person)
- C. DISCUSSION/ACTION ITEMS
 - 1. Usage of American Rescue Plan Act (ARPA) Funds
- D. PUBLIC COMMENTS ON ANY MATTER LISTED ON THE AGENDA (five (5) minute time limit for each person)
- E. ADJOURNMENT



To: Common Council From: Donald Merkes, Mayor

Date: 8 March 2022

RE: American Rescue Plan Act (ARPA) funding workshop

Background

About a year ago President Biden signed the American Rescue Plan Act providing direct funding to communities across the United States to combat the negative effects of COVID-19. Menasha received \$1,870,741.

In January of 2022 the US Treasury released its final rule with a new provision allowing municipalities to use up to \$10 million of ARPA funds for "government services" which is understood to refer to any service that a municipality would typically provide. This new provision would give Menasha wide latitude as to how the funding is used, although we would still need data to support the spending. In addition, the Wisconsin Department of Revenue in its "Key Points to Consider" letter, dated January 27, issues a reminder to "...avoid violating and/or negatively impacting your qualification status for the Wisconsin state programs..." such as levy limits and shared revenues.

Rules would still block using ARPA funds for debt service, replenishing reserves, pension funding, or programs that undermines the efforts to stop the spread of COVID19.

Analysis:

The City of Menasha has already obligated a portion of its funds to:
Police Tasers \$8,967
Police Radios \$207,018
The remaining balance \$1,654,756 would need to be spent by the end of calendar year 2024.

Recommendation:

ARPA funds are non-recurring so their use should be applied primarily to non-recurring expenditures that would have a long term impact on the community. Care should be taken to avoid creating new programs or add-ons to existing programs that require an ongoing financial commitment. Investment in critical infrastructure is particularly well suited use of ARPA funds because it is a non-recurring expenditure that can be targeted to strategically important long- term assets that provide benefits over many years. However, care should be taken to assess any on-going operating costs that may be associated with the project.

- Projects that have been previously discussed include:
- Radio Replacement for Police and Fire
- IT security
- Sanitary Sewer Relay Project
- Hands on learning space at the Elisha D Smith Library
- Jefferson Park Master Plan implementation
- Creation of a Menasha Business Improvement District (BID)

Following discussion with the public and elected officials of these and other options it is requested that the Common Council recommend one or more projects for further study. A formal decision on the project (or projects) will be voted on at a future Common Council meeting.



TO: Common Council DATE: 29 July 2021

FROM: Jennifer Sassman, Finance Director

RE: American Rescue Act Plan (ARPA) Funding

Background

On March 11, President Biden signed the American Rescue Plan (ARPA) Act into law providing \$65.1 billion of direct aid to every city, town or village across the country. Menasha will receive \$1,870,741 as part of the program.

These funds may generally be used for:

- Revenue replacement for the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency, relative to revenues collected in the most recent fiscal year prior to the emergency
- COVID-19 expenditures or negative economic impacts of COVID-19, including assistance to small businesses, households, and hard-hit industries, and economic recovery
- Premium pay for essential workers
- Investments in water, sewer, and broadband infrastructure

These fund generally may not be used for:

- Funds allocated to states cannot be used to directly or indirectly to offset tax reductions or delay a tax or tax increase
- Funds cannot be deposited into any pension fund

Funding must be spent by the end of calendar year 2024.

Menasha has received the first payment of \$935,371, and expects a second payment of \$935,370 in 2022.

Analysis

City Staff have identified potential projects that will have long term impact in the community, address delayed capital projects, improve public safety and security, and address the negative impacts COVID19 has had on Menasha. Staff recommendations include:

- Radio Replacement- \$462,769 (Police \$342,259, Fire 120,510)
 - The current radio hardware for Police/Fire is over 10 years old and is nearing the end of useful service life. Winnebago County has recommended that agencies update their radio equipment. Police and Fire are exploring other grant opportunities that may fund a portion of this item.
- IT Security-\$63,783

- Firewall Replacement-replace current firewall with a more secure firewall-\$10,350 (year one implementation & hardware cost), \$2,700 annual thereafter
- Employee Security Training (Knowb4)-awareness and simulated phishing platform training-\$3,456 (year one implementation), \$2,106 annual thereafter
- Multifactor Authentication (MFA)-blends two separate factors when accessing the network-\$9,822 (year one implementation), \$4,212 annual thereafter
- Certificate Servers (CA)-these servers will allow only city issued devices to connect to the VPN for network access (remote access ability)-\$1,450 implementation cost
- SCCM-tool to enable the management, deployment and security of devices and applications city wide. Assist in correcting software vulnerabilities quicker-\$38,705 (hardware & implementation cost). Can choose to break out the hardware cost over 3 years (\$11,853/year)
- Sanitary Sewer Relay Project-\$1,269,189
 - Replacement of an 18" 1930's era sanitary sewer and syphon under the Fox River and Government Canal from Marina Place to Oak Street extended. New system would be installed via directional boring and would have redundant features to minimize the potential of failure.
 - Replacement, repair, and lining of a 30" sanitary sewer that runs from the Banta Building west
 continuing down Garfield St. to the NM Sewerage plant. Portions of this line run under buildings
 and in the river. It would be desirable to relocate as much of this as possible in ROW.
 Reconstruction of Garfield St. could be included in this project.
- Establish an advanced hands on learning space at the Elisha D. Smith Library \$75,000
 - The Covid pandemic created a host of issues across the country, the effects of which are still being felt. As schools were closed educators scrambled to find ways to deliver education virtually with zero planning or experimentation. Many of our students fell through the cracks and fell behind during this period. This was more pronounced for our lower income students who lacked access to needed technology and support. In addition to our students many adult community members found their work eliminated and are now faced with finding alternatives and retraining for new professions. The Elisha D. Smith Public Library proposes to create an advanced, hands-on learning space that will allow community members of all ages to explore interests and learn new skills. We are seeking funding to establish the space in the library's current activity room. Funding would allow us to create a full, integrated collection of computers, tools, and equipment to achieve our learning goals. The space would be supervised by current library staff with possible assistance from UW Oshkosh at Fox Valley resources. Going forward library funding would be utilized to replace obsolete equipment or to enhance offerings. The Library is exploring other grant opportunities that may fund a portion of this item.

Fiscal Impact

ARPA funds are one-time revenues that are placed in a special revenue account. The expenditure of ARPA funds does not impact the City's levy limits, or expenditure restraint limits.

Recommendation

Direct staff to further develop an ARPA funding plan to include in the 2022 budget.

BoardmanClark

Municipal Law Newsletter

VOLUME 28, ISSUE 1 JANUARY/FEBRUARY 2022

In this issue

- Final ARPA Rule May Facilitate Infrastructure Projects to Provide Government Services
- Court Upholds Milwaukee's Decision to Terminate Licenses for Gas Station Found to be a Nuisance
- Wisconsin Supreme Court: Municipalities Not Entitled to Certiorari Review of Tax Assessments

Final ARPA Rule May Facilitate Infrastructure Projects to Provide Government Services

In early January, the US Treasury Department released its final rule pertaining to the American Rescue Plan Act ("ARPA"), adopting Treasury's interim final rule published on May 17, 2021, but with certain amendments. Perhaps the most significant amendment to the interim final rule for many smaller municipalities considering various infrastructure projects is the new provision allowing municipalities to use up to \$10,000,000 of ARPA funds for "government services." See 31 C.F.R. § 35.6(d). This provision may provide greater flexibility for the use of ARPA funds for, among other things, infrastructure projects that would not otherwise qualify as eligible uses under the rule.

Subsection 35.6(d) of the rule now allows a municipality to use a "standard allowance" of \$10,000,000 when determining how much of its ARPA funds may be used to replace "lost revenue" for government services. Thus, under the final rule, a municipality may either calculate its lost revenue under the formula set out in the rule or claim the standard allowance and use up to \$10,000,000 for government services projects. As used in the rule, "government services" is understood to refer to any service that a municipality would typically provide. Treasury has given the following examples of eligible uses within this category: "construction of roads and other infrastructure, provision of public safety and other services, and health and educational services."

There are some restrictions; however, they should not pose a problem for most municipalities:

- ARPA funds may not be used for debt service, replenishing financial reserves, or deposits into a pension fund.
- ARPA funds may not be used for a program, service, or capital expenditure that conflicts with or contravenes the statutory purpose of ARPA, including a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19.

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Court Upholds Milwaukee's Decision to Terminate Licenses for Gas Station Found to Be a Nuisance

The Milwaukee Police Department (MPD) and the neighbors near the Citgo gas station on North 35th Street were getting fed up. An extensive MPD report detailed several shootings, armed robberies, illegal drug transactions and panhandling complaints at and around the gas station. After a hearing, Milwaukee terminated all of the licenses held by the station, and the termination of those licenses was upheld by the Circuit Court in Milwaukee and the District I Court of Appeals. VK Citgo v. City of Milwaukee, 2020 AP 1458 (Dec. 28, 2021, not recommended for publication).

Citgo held licenses for Extended Hours Establishments (allowing 24-hour operation), Filling Station, Weights and Measures, and Food Dealer (the Licenses) under Milwaukee's ordinances. When Citgo applied to renew those Licenses in 2019, the City sent a formal notice that the Licenses might be terminated for a number of reasons, including that the gas station "tends to facilitate a public or private nuisance," that it "has been the source of congregations of persons," and that these led to complaints of "illegal drug activity, disturbing the peace, thefts, assaults, and batteries." Attached to the notice was the extensive MPD police report, and a nuisance letter from an MPD Captain, finding the station was a nuisance for the incidents in the letter. A hearing was set for December 3, 2019, before the City's Licensing Committee.

The MPD Captain testified at the hearing, detailing the problems in the MPD Report, and that Citgo's attempt to come up with an approved nuisance abatement plan had been unsuccessful. He recommended terminating only the Extended Hours license. Neighbors also testified as to the problems at the station, as did the Milwaukee Alder from the district.

Citgo argued it had done all that it could, including employing security guards and security cameras, and the problems often started elsewhere. At the end of the hearing, the Licensing Committee voted to recommend that ALL of the Licenses for Citgo not be renewed. The Milwaukee Common Council adopted the Committee's recommendations. Citgo appealed to Circuit Court by a *certiorari* action.

The only issue raised by Citgo was a due process argument. Citgo claimed the original notice from Milwaukee was inadequate, arguing that it failed

Continued on page 3

Final ARPA Rule Provides a "Catch-All" Use Category, Dramatically Expanding the Types of Eligible Projects

Continued from front page

 Use of ARPA funds must comply with applicable state and federal laws and may not be used in violation of the conflict-of-interest requirements contained in the Award Terms and Conditions, including any self-dealing or violation of ethics rules.

Although it may seem counterintuitive, 31 C.F.R. § 35.6(d) ("Providing government services") would presumably allow a water, sewer, or broadband infrastructure project that might not be an eligible use under 31 C.F.R. § 35.6(e) ("Making necessary investments in water, sewer, and broadband infrastructure"). For example, a municipality wishing to build new broadband infrastructure may not be sure whether the project meets all the requirements of Subsection (e), the broadband specific category. However, the project (up to a maximum of \$10,000,000) should nevertheless fall within the scope of Subsection (d), the broad government services category of eligible uses, because providing utility-type services is a typical government service.

Thus, a municipality would be wise to evaluate the projects it may be considering under the "government services" category of eligible uses.

- Anita Gallucci and Julia Potter

Wisconsin Supreme Court: Municipalities Not Entitled to Certiorari Review of Tax Assessments

A recent decision from the Wisconsin Supreme Court restricts a municipality's ability to challenge tax determinations rendered by a local board of review. In State of Wisconsin ex rel. City of Waukesha v. City of Waukesha Board of Review, 2021 WI 89, the Wisconsin Supreme Court unanimously held that the City of Waukesha ("the City") was not entitled to seek certiorari review of a tax assessment determination of the City's Board of Review ("the Board").

This case stemmed from a property valuation disagreement between the City and the Salem Methodist Church over a piece of church-owned property ("the Property"). In 2017, the City assessed the Property at \$51,900. The City reassessed it in 2018 at \$642,200 because the church decided to list it for sale. Given the assessment jump, the church filed an objection with the Board and claimed that the Property was actually worth \$108,655. The Board agreed with the church's valuation and concluded it was worth \$108,700. Thus, the Board rejected the City's reassessment figure.

What came next is the critical juncture in the litigation: the City filed an appeal with the Waukesha County Circuit Court and invoked Wis. Stat. § 70.47(13) which governs certiorari review of Board determinations. Wis. Stat. § 70.47(13) provides that appeals from board decisions must be "commenced within 90 days after the *taxpayer* receives notice [of the board's determination]." (emphasis added). Notably, it makes no mention of whether a city or municipality may commence certiorari review.

The church moved to dismiss the appeal, arguing that the statute only granted *taxpayers* a right to seek certiorari review—not *municipalities*. The circuit court rejected that argument and granted certiorari review. The circuit court then found that the City's 2018 reassessment was reasonable and reinstated it. The church appealed this decision to the Wisconsin Court of Appeals which reversed the circuit court's decision and held that Wis. Stat. § 70.47(13) did not grant the

City a right to appeal. The City then appealed to the Wisconsin Supreme Court which ultimately affirmed the decision of the court of appeals.

Writing for a unanimous Supreme Court, Justice Ann Walsh Bradley concluded that certiorari review was unavailable to the City under the statute's plain wording. According to the Supreme Court, the statute's reference to "taxpayer" and lack of reference to "municipality" conclusively resolved the issue. The Supreme Court reasoned that when the legislature intends to grant municipalities an avenue for relief, it does so unambiguously as it has in other contexts such as zoning determinations under Wis. Stat. § 62.23(7) (e)10. State of Wisconsin ex rel. City of Waukesha v. City of Waukesha Board of Review thus provides important clarification to municipalities which seek to challenge tax assessment determinations.

- Storm B. Larson

Court Upholds Milwaukee's Decision to Terminate Licenses for Gas Station Found to Be a Nuisance

Continued from page 2

to advise them of the specific incidents that were behind the non-renewal proceeding.

The Circuit Court and the Court of Appeals quickly rejected that argument and upheld the non-renewal of the Licenses. The courts noted that the notice itself was relatively brief, but that Milwaukee had attached the extensive MPD report and the nuisance letter, both of which detailed the incidents leading to the non-renewal proceeding. The courts concluded Citgo had sufficient notice to meet both due process and the Milwaukee ordinances.

The case indicates the importance of municipalities maintaining adequate records on problem properties and using those records to give adequate notice of the basis of any proceeding to revoke or non-renew alicense.

- Michael P. May



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Municipal Law Newsletter

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Michael P. May	286-7161
Julia K. Potter	283-1720
Jared W. Smith	286-7171
Catherine E. Wiese	286-7181
Steven C. Zach	283-1736

ebrownlee@boardmanclark.com
agallucci@boardmanclark.com
bgoodman@boardmanclark.com
ehagen@boardmanclark.com
kharrell@boardmanclark.com
rheinemann@boardmanclark.com
pjohnson@boardmanclark.com
mjulka@boardmanclark.com
lkobza@boardmanclark.com
slarson@boardmanclark.com
mmay@boardmanclark.com
jpotter@boardmanclark.com
jsmith@boardmanclark.com
cwiese@boardmanclark.com
szach@boardmanclark.com

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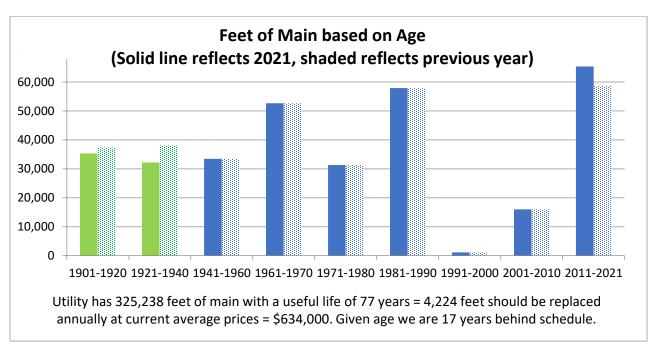
Date: March 8, 2022

To: Menasha Common Council

From: Melanie Krause, General Manager

Re: ARPA Funding

One of the purposes of ARPA funding was for water infrastructure and the Utility would like to request some consideration of these funds for water main replacement. At the February Commission meeting we requested to borrow \$965,363 to fund the current year water main projects and this financing will be coming before the Common Council in the coming months. The Water Utility does not have cash reserve to fund this level of replacements in a year and will need to borrow if there is no other funding available. We have been collaborating with the City on the street projects since we do not want to put a new road over old main. However, we realize that we cannot maintain our water rates and continue to replace mains at the pace of street replacements. In addition, we have mains that have exceeded their useful life and jeopardizes the reliability of the system by increasing the risk of water main breaks and in turn increases our street repair costs.



For these reasons the Utility would like to request that some ARPA funding be used to replace the aging water infrastructure within the City.

Request for Consideration of Investment of ARPA Funds to Create a BID for Menasha

by Alderperson Rebecca Nichols

What: A Business Improvement District (BID) that can advocate for the business district, market the District as a destination, recruit businesses, plan events and seasonal promotions, undertake beautification projects, apply for and administer grants, and more.

Why: Promote the long-term, sustainable economic and cultural vitality of Menasha's downtown. The pandemic and closure of the Racine St. Bridge will continue to put pressure on Menasha's downtown businesses. Now is the time to support a professional exploration of options that will see Menasha come out stronger on the other side.

How: Use a portion of the City's American Rescue Plan Act funds (ARPA) as seed money to start a Business Improvement District (BID) in Menasha. Initially, a portion of this money would pay for a consultant to work with business and property owners to establish a sustainable business plan for the BID. At the end of that process, the remaining funds will be used to provide an initial grant to the BID.

Who: A professional hired by the city to work with downtown business and property owners to establish a sustainable BID that conforms to state law and local policy/ regulations. The eventual BID would have a paid Executive Director who answers to an independent Board of Directors.

When: Late 2021-2022

Where: Greater downtown area to be determined by the consultant and working group of business and property owners.



M E M O R A N D U M

To: Common Council

From: Megan Sackett, Parks & Recreation Director

Date: March 14, 2022

RE: Jefferson Park Plan Updates

In 2017, the community embarked on a visioning process to revitalize Jefferson Park. Throughout the original development process, some features and preferred elements were emphasized to be preserved/enhanced:

- Community Gathering/Event Space
- View of Water
- Waterfront Access
- Large Gathering Area
- Open Space and Trees
- The Pavilion
- Baseball/Softball
- Recreation
- Gateway to Lake Winnebago

In 2019, the first phase of the vision plan was implemented with the removal of the west softball diamond, the reconfiguration of the adjacent parking lot, the addition of basketball courts and the addition of gateway features.

When preparing for the implementation of the next phases of the Jefferson Park plan, the Park Board took the opportunity to review and update the 2017 vision plan to be relevant with the current and future uses of the park while working to honor the vision and community input from 2017.

Key Highlights of the Changes Made to the Overall Vision Plan include:

1. Outdoor Event Space restructured to be more flexible and multi-functional

- Created an Outdoor Social Space adjacent to large pavilion with a blend
 of picnic tables and yard games with the area defined by curb or small
 wall seats about 3 ft. high to match the stone of Jefferson School and
 Jefferson Park pavilion with adjacent fireplace/firepit area
- Addition of outdoor shelter off of the main pool house/indoor community room that can also serve as a performance area that opens to large lawn for seating providing versatility for park events or general park users
- Update of Large Open Air pavilion to freshen up the space and make needed maintenance repairs

2. Kargus Dr.

 Parking stalls added along Kargus Dr. by playground and east of pavilion to bookend possible no parking zone along Kargus. The no parking zone along Kargus will allow those at pavilion and the social space to have unobstructed views of the water.

3. Softball Diamonds/East Shelter

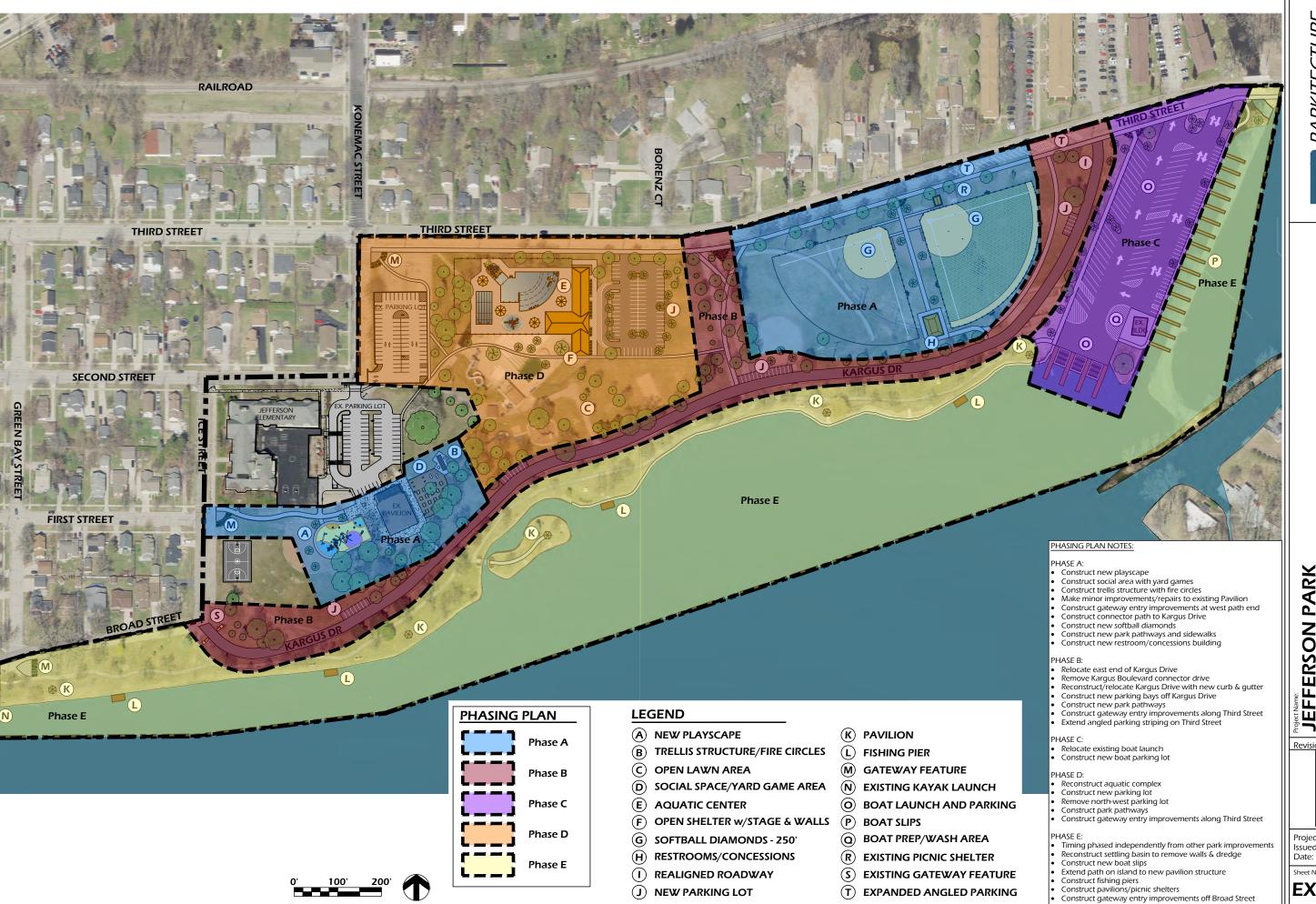
- Modified layout of softball diamonds to replace existing diamonds.
 Original 2017 Plan allowed for the east diamond to exist without any planned updates. Current diamond is in need of lighting replacement and field restoration.
- Maximized use of green space adjacent to boat launch parking to fit in a second diamond that is necessary to maintain current recreational uses and attract future recreation users
- Proposed West diamond has removable outfield fence to allow for options for flexible open green space. Diamond would still have backstop and baseline fence. Lighting for both diamonds would be from baselines allowing a consolidation of lights to serve both diamonds.
- Relocated proposed shelter on east end of park to sit equally between ball diamonds and boat launch. This facility would provide bathrooms for east side of park, concessions for ball diamonds, open air shelter for rentals and storage for maintenance equipment.

Jefferson Park is a gem of the City of Menasha and has served the community well since the 1930s. This is a pivotal time for Menasha with unprecedented redevelopment in the downtown area just footsteps from Jefferson Park. Since the finalization of the original plan in 2017 and the onset of COVID in 2020, parks, trails and open spaces have seen unprecedented use across the country and Menasha is no different.

This is a transformational project to re-invest in Menasha's most utilized public space, upgrading existing features while adding new features to create a showpiece for generations to come.



EXHIBIT A



JEFFERSON PARK VISION PLAN UPDATE Menasha, WI

Issued For:

Review 2/09/2022

PARK PHASING PLAN

Sheet Number

EXHIBIT D



Project: Jefferson Park - Vision Plan Update

Date: February 14, 2022

PRELIMINARY BUDGET

PHASE A		Cost Range
	Pavilion Area Improvements	\$45,000 - \$65,000
	Social Space & Fire Pit Area Improvements	\$150,000 - \$200,000
	Softball Fields	\$350,000 - \$500,000
	Trail System, Shelter & Site Restoration	\$170,000 - \$200,000
	Restroom/Concessions Building	\$600,000 - \$800,000
	(Does not include playground)	\$1,315,000 - \$1,765,000
PHASE B		Cost Range
	Kargus Drive Reconstruction w/Parking Areas	\$625,000 - \$750,000
	Kargus Curb & Gutter/Storm Improvements	\$200,000 - \$300,000
	Trail System	\$35,000 - \$50,000
	Park Restoration & Landscaping Improvements	\$55,000 - \$125,000
		\$915,000 - \$1,225,000
PHASE C		Cost Range
	Relocate Boat Launch	\$280,000 - \$400,000
	Boat Launch Parking Lot & Trails/Sidewalks	\$700,000 - \$950,000
		\$980,000 - \$1,350,000
<u>PHASE D</u>		Cost Range
	Pool Building & Aquatic Complex	\$8,600,000 - \$11,000,000
	Parking Lot	\$180,000 - \$250,000
	Trail System & Park Restoration	\$90,000 - \$150,000
		\$8,870,000 - \$11,400,000
PHASE E		Cost Range
	Extents To Be Determined	Further Study needed

Note: All cost ranges include estimated Contingency and A/E Fees.