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Clerk of Circuit Court
Kenosha County
2023CV000878

STATE OF WISCONSIN : CIRCUIT COURT : KENOSHA COUNTY

VILLAGE OF BRISTOL

Plaintiff and
Counterclaim-
Defendant,

Case No. 2023CV000878

vs.

CHRISTINE BARASSI-JACKSON and
QUENTIN JACKSON,

Defendants,
Counterclaimants, and
Third-Party Plaintiffs.

vs.

RANDY R. KERKMAN and
RENEE BRICKNER,

Third-Party Defendants.

**VILLAGE OF BRISTOL’S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY
JUDGMENT AGAINST THE JACKSONS ON BRISTOL’S COMPLAINT**

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Plaintiff Village of Bristol (“Bristol”), by and through its counsel, Michael Best & Friedrich LLP, files this brief in support of its motion for summary judgment on its complaint against defendants Christine Barassi-Jackson (“**Barassi-Jackson**”) and Quentin V. Jackson (individually “**Jackson**” and collectively the “**Jacksons**”).

INTRODUCTION

This lawsuit concerns the Jacksons years-long refusal to comply with Wisconsin law and controlling Bristol Ordinances relating to their filling activities, erosion control and storm water management, placement of a driveway and driveway culvert, and creation of berms. The Jacksons have no good faith defense to Bristol’s lawsuit. In fact, Jackson admits during his deposition that he was required to comply with Bristol’s stormwater management ordinances.

Nevertheless, throughout this lawsuit, the Jacksons continue to assert their factually and legally frivolous position that they are somehow *not required* to comply with Wisconsin law, Bristol Ordinances (including Bristol’s stormwater management ordinances), and the August 5, 2020 Permit, solely because the Wisconsin Department of Natural Resources granted the Jacksons a “nonfederal wetland exemption.” Stated another way, the Jacksons only defense to Bristol’s complaint is their own admittedly legally and factually false belief that because the DNR ultimately granted them a “nonfederal wetland exemption”—**which expressly required the Jacksons to comply with “WPDES stormwater permits and stormwater ordinances adopted under** section 59.693, 60.627, and 61.354 or **62.234, Wis. Stats**”—they are not required to comply with Bristol’s Ordinances and the conditions of the August 5, 2020 Permit.

From 2020 until August 31, 2023, the Jacksons repeatedly violated and failed to comply with **Wis. Stat. §§ 62.23(7)** (zoning) **and 62.234** (construction site erosion control and storm water management zoning) and **Bristol Ordinance sections 13-1-46** (Filling Activities), **15-2** (Construction Site Erosion Control), and the August 5, 2020 Erosion Control and Storm Water

Permit issued by Bristol (the “**August 5, 2020 Permit**”). The Jacksons’ violations resulted in Bristol sending the Jacksons numerous warnings, issuing a May 5, 2022 Violation Notice, an August 31, 2023 Stop Work Order, and, as a last resort, commencing this lawsuit.

The Jacksons’ permit application requested to “**install culverts as indicated and to truck in dirt to complete berms as indicated.**” But that is not what the Jacksons did. Rather, the Jacksons brought approximately 6,000 cubic yards of fill on their property and placed it in various areas, including wetlands, improperly constructed berms, and stockpiled the rest. Bringing 6,000 cubic yards of fill onto their property was not authorized by the Bristol Ordinances and exceeded the 500 cubic yards they were permitted.¹ The Jacksons also installed a driveway, driveway culvert, and berms that were not authorized or compliant with the August 5, 2020 Permit and Bristol Ordinances. As a direct result of the Jacksons’ violations, the Jacksons interfered with existing drainage patterns, reduced drainage storage capacity, and caused water to back up onto their neighbors property to the west.

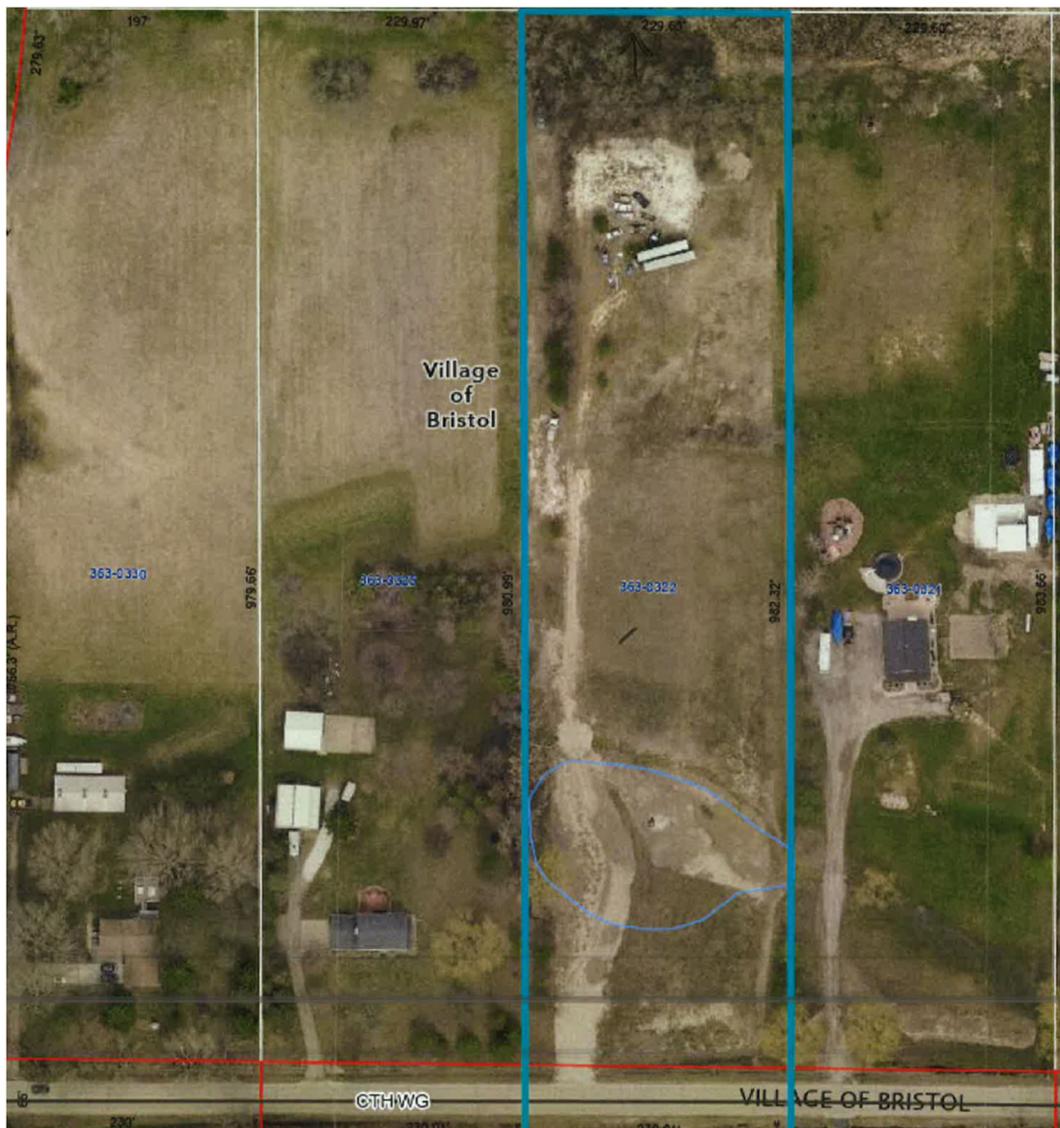
The Court should grant Bristol’s motion for summary judgment on its complaint because there are no genuine issues as to any material fact and Bristol is entitled to judgment as a matter of law. The Court should enter an order that: **(1)** declares the Jacksons violated Wisconsin law, Bristol Ordinances section 13-1-46, 15-2, and the August 5, 2020 Permit; **(2)** permanently enjoins the Jacksons from any fill or construction activity on the Property without a permit; **(3)** requires the Jacksons restore or pay for the cost for Bristol to restore the Property to the condition it was in prior to the Jacksons’ violations; and **(3)** requires the Jacksons pay a forfeiture of between \$100 and \$500 per day since August 31, 2023 and Bristol’s cost to prosecute this lawsuit, including all of Bristol’s reasonable attorneys’ fees and costs.

¹ For context, a standard quad-axle dump truck has a typical capacity of 17 cubic yards and thus, every 100 cubic yards of fill is about six dump truck loads. (Dkt. 25 at 4.) An extra 5,500 cubic yards means **330 extra dump trucks.**

BACKGROUND

I. Parties And Property.

Bristol is a Wisconsin village organized under the laws of the State of Wisconsin. (Dkt. 13 at 2: Counterclaim ¶ 3.) Randy Kerkman is the Village administrator. (*Id.*: Counterclaim ¶ 4.) Christine Barassi-Jackson is an adult resident of the state of Wisconsin. (*Id.*: Counterclaim ¶ 1.) Quentin Jackson is an adult resident of the state of Wisconsin. (*Id.*: Counterclaim ¶ 2.) Barassi-Jackson is the fee simple title holder of the real estate known as tax parcel 37-4-121-363-0322 located in the Village of Bristol, Wisconsin (the “Property”). (*Id.*: Counterclaim ¶ 1.)



(Witkov Decl. ¶ 27, Ex. 20.) The Jacksons' Property is outlined in blue. (*Id.*; Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 16-17.) The Siordias property is to the West of the Jacksons. (*Id.*; *Id.* at 18:7-13.) The Asletts property is two houses to the west of the Jacksons. (*Id.*; *Id.* at 18:14-23.)

II. The Jacksons' Pre-Permit Fill Activity.

Jackson admitted to filling activities on the Property *prior to* Bristol's issuance of the August 5, 2020 Permit. (Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 171: 4-7). The Jacksons conducted these filling activities without authorization from Bristol *or* the Wisconsin Department of Natural Resources ("DNR"). (*Id.*)

On July 10, 2020, Kerkman wrote Jackson an email titled, "storm water permit." (Witkov Decl. ¶ 7, Ex. 5: Bristol_435-36.) The email states,

I see you received the DNR letter. **You still need a storm water erosion control permit from Bristol.** It is attached. **You will need to have a civil engineer calculate the size of the cross culverts for your driveway so you do not back up water onto the neighbor.** Attached is the storm water permit.

(*Id.* at Bristol_435 (emphasis added).) Kerkman provided the Jacksons with the Village of Bristol Erosion Control and Storm Water Permit. (*Id.* at Bristol_436.)

On July 14, 2020 at 10:16 am, Kerkman wrote the Jacksons stating, "I just sent you the ordinance and the requirements and the application. The previous berm was not permitted because we were waiting for the DNR." (*Id.* at Bristol_393). On July 14, 2020 at 1:08pm, Kerkman responded to Barassi-Jackson's inquiry regarding a permit stating,

You are correct you did submit a check and **we did cash it since work started with out a permit. After all is satisfactory and we don't spend any more money such as engineering review of the size of the culverts** you will get the \$900 back after grass is growing. **There is still no silt fence up which I said was required when you came in the first time.** You will not need to send any more money **just the data we need to issue the permit.**

(*Id.* at Bristol_392-3)

On July 16, 2020 at 9:27am, Kerkman responded to Barassi-Jackson stating the Jacksons must stop filling activities until a permit is issued. (*Id.* at Bristol_392). Kerkman stated,

You must stop bringing in dirt and dumping until a permit is issued. We will not issue a permit without a Civil engineering documentation of sizing of the culvert to flow the overland water from west to east. Silt fence can and should be installed to stop silt from running into the wetland and downstream.

(*Id.* (emphasis added).)

On July 16, 2020 at 10:49am, Kerkman responded to Barassi-Jackson stating Bristol had not issued a permit and the Jackson's pre-permit filling activities must stop:

Christine, **Problem is you created a drainage issue with your neighbor before you were ever issued a permit. We still have not issued a permit. You started the work without a permit. You have never given us all we need for the permit.** We were waiting for the DNR to figure out what was going to happen. Yes you paid for the permit because you started the work. **You should not continue work until the permit is issued. The only work is to install silt fence.** If you do not stop work I will have a deputy stop out. I never conveyed to you that you were to do any work until 1 dnr permit **and 2 a permit from us.**

(*Id.* at Bristol_391 (emphasis added).)

III. The Jacksons' July 28, 2020 Bristol Erosion Control And Storm Water Permit Application And The August 5, 2020 Permit Issued By Bristol With Conditions.

On July 28, 2020, Barassi-Jackson submitted a Village of Bristol Erosion Control and Storm Water Permit (the "Jacksons' July 28, 2020 Permit Application"). (Witkov Decl. ¶ 8, Ex. 6; Jackson 1 Dep. Ex. 6 at Bristol_1584; Witkov Decl. ¶ 5, Ex. 3; Barassi-Jackson Dep. at 27-29.)

Village of Bristol
Erosion Control and Storm Water Permit

Owner Info: _____ Contractor Info: N/A

Name: Christine Jackson Name: _____

Address: 19737 84th Place #3 Bristol, WI 53104 Address: _____

Phone: 847-791-6877 or 847-361-5225 Phone: _____

Provide contour map (1 inch equals 40ft) showing:

- Contours
- Storm flow directions
- Any streams
- Wetlands
- Shoreline
- Existing cover type ex. grass, corn, trees
- Property lines
- Easements
- Elevations prior to construction
- Elevations after construction
- Show location of proposed buildings, well, septic/mound system and driveway
- Dirt piles
- All earth disturbances
- Soil types
- Storm water calculations and detention basins may be requested by DPW

NOTE Nothing shall be allowed in the right of way without permit (ex. concrete drive)
Any damage to the road/right of way during construction will be repaired by or billed to the owner.

Signed by: [Signature] Date: 28 JUL 2020
Owner

Reviewed by: _____ Date: _____
Public Works Director

Comments/Corrections Request permit to install culvert as indicated and to truck in dirt to complete berms as indicated.

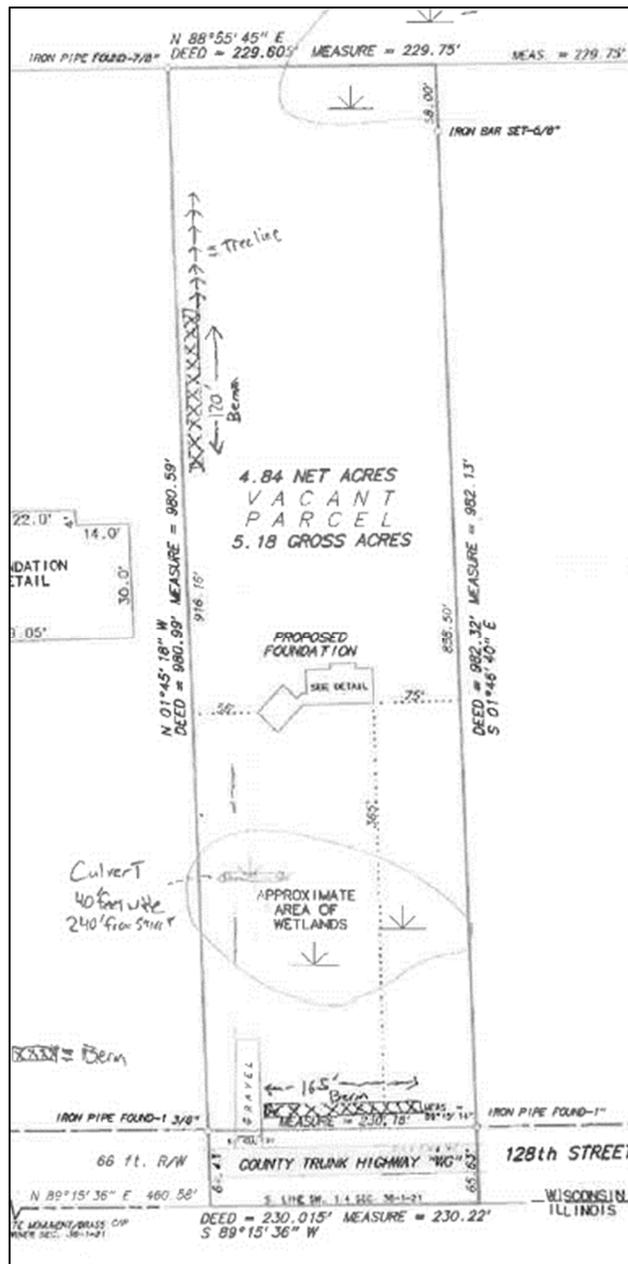
(Witkov Decl. ¶ 16, Ex. 14: Dep. Ex. 6 at 1.)

In the comments section on the Jacksons' July 28, 2020 Permit Application, Barassi-Jackson wrote, "**Request permit to install culvert as indicated and to truck in dirt to complete berms as indicated.**" (*Id.* (emphasis added).)

The Jacksons' July 28, 2020 Permit Application included a June 20, 2019 plat of survey (the "June 20, 2019 Plat of Survey"). (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 28, 211-212.) The June 20, 2019 Plat of Survey attached to the Jacksons' July 28, 2020 Permit Application referenced:

- Installation of a driveway
- Installation of a driveway culvert (240 feet from the street)
- Installation of a 165-foot-long berm of unknown width in an east-west orientation near the right-of-way (ROW) of 128th Street (referred to as **Berm 1**)
- Installation of a 120-foot-long berm in a north-south orientation on the northern half of the parcel along the west Property line (referred to as **Berm 3**)

(*Id.*; Witkov Decl. ¶ 7, Ex. 6: Dep. Ex. 6 at Bristol_1587; Dkt. 25 at 1-2.) No areas of general fill were included in the Jacksons' July 28, 2020 Permit Application. (*Id.*)



(Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 2.)

Upon receipt of the Jacksons' July 28, 2020 Permit Application, Kerkman emailed the Village Engineer, Strand Associates, Inc. ("Strand") and asked the Village Engineer to review the material submitted to make sure the culvert would not back up water on to the neighboring property to the west. (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 116-17, Ex. 7; Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 203; Witkov Decl. ¶ 6, Ex. 4: Kerkman Dep. at 165; Witkov Decl. ¶ 10, Ex. 8: Bristol_347.)

From July 30, 2020 to July August 4, 2024, Bristol, through both Kerkman and its outside engineer Strand, requested from the Jacksons, but never received, the following information:

- Existing culvert size, length, material, and whether it would be left in place
- Proposed driveway elevation
- Proposed culvert size, material, length, and slope
- Storm flow directions
- Proposed fill locations
- Depth of water in the wetlands
- Photographs of the existing conditions.

(Witkov Decl. ¶ 11, Ex. 9: Dep. Ex. 56; Dkt. 25 at 1-2: Strand Expert Report § 3; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 118, 122; Witkov Decl. ¶ 10, Ex. 8: Dep. Ex. 7; Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 211.)

Instead of providing this information, the Jacksons deemed Bristol's requested information to be "crazy shit" and absurd. (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 129; Witkov Decl. ¶ 4, Ex. 2: Jackson Dep. 2 at 430.) Barassi-Jackson admits the Jacksons never provided Bristol with: (1) a civil engineer's stormwater flow calculations for the Property; (2) a civil engineer's stormwater flow calculations for the Property; (3) any document showing stormwater flow directions on the Property; and (4) any document showing elevations for the culverts and berms prior to and after construction. (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 210, 213.)

On August 5, 2020, Kerkman executed and issued the August 5, 2020 Permit, with the following conditions: “[p]er Plan since Engineering not done prior to Permit Applicant is Responsible so water does not back up on neighbors property to the west. RR” (Witkov Decl. ¶ 6, Ex. 4; Kerkman Dep. at 113; Witkov Decl. ¶ 12, Ex. 10; Dep. Ex. 69 at 1; Kerkman Decl. ¶ 7.) “Per Plan” refers to the documents included with the Jacksons’ July 28, 2020 Permit Application. (Kerkman Decl. ¶ 8.) “Applicant is Responsible so water does not back up on neighbors property to the west” refers to Parcel 363-0325, which is owned by the Siordias. (Kerkman Decl. ¶ 9.)

Village of Bristol
Erosion Control and Storm Water Permit

Owner info: _____ Contractor info: N/A

Name: Christine Jackson Name: _____

Address: 19737 84th Place #3 Bristol, WI 53104 Address: _____

Phone: 847-791-6877 or 847-361-5225 Phone: _____

Provide contour map (1 inch equals 40ft) showing:

- Contours
- Storm flow directions
- Any streams
- Wetlands
- Shoreline
- Existing cover type ex. grass, corn, trees
- Property lines
- Easements
- Elevations prior to construction
- Elevations after construction
- Show location of proposed buildings, well, septic/mound system and driveway
- Dirt piles
- All earth disturbances
- Soil types
- Storm water calculations and detention basins may be requested by DPW

NOTE Nothing shall be allowed in the right of way without permit (ex. concrete drive)
Any damage to the road/right of way during construction will be repaired by or billed to the owner.

Signed by: [Signature] Date: 28 Jul 2020
Owner

Reviewed by: [Signature] Date: 8/5/2020
Public Works Director

Comments/Corrections: Request permit to install culvert as indicated and to truck in dirt to complete berms as indicated. Per Plan since engineering not done prior to Permit Applicant is responsible so water does not back up on neighbors property to the west

EXHIBIT 69
WR C. B. - TB

(Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 1.)

On August 5, 2020, Kerkman also emailed Barassi-Jackson the August 5, 2020 Permit, stating,

[a]ttached is the permit. Engineering information we requested was to help make sure water was not going to back up on to your neighbors property. **Since you refuse to do the engineering work prior you are responsible if water backs up to correct the situation.**

(Witkov Decl. ¶ 9, Ex. 7: Bristol_347 (emphasis added); Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 116.)

IV. The Jacksons Did Not Comply With The August 5, 2020 Permit And Bristol Ordinances.

Jackson admitted under oath during his deposition that the Jacksons' July 28, 2020 Permit Application and the August 5, 2020 Permit that Bristol issued did not seek or permit the Jacksons to place fill in the wetland area – it just said, “truck in dirt.” (Witkov Decl. ¶ 3, Ex.1: Jackson Dep. 1 at 217:02-9). Barassi-Jackson admitted that the Jacksons' July 28, 2020 Permit Application and the August 5, 2020 Permit issued by Bristol did not seek or permit the Jacksons to build Berm 2. (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 38:25-39:3).

Furthermore, the Jacksons admit that they do not even know how much fill they placed in the wetland area. (Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 216:22-217:01; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 13:5-19.) Specifically, when asked “[h]ow much fill did you have to place in the wetland area to work on the culvert,” Jackson responded, “I’m not a hundred percent sure how much it was.” (Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 216:22-217:01.) When then asked “[a]ny idea,” Jackson testified, “**I’m not going to guess, no.**” (*Id.* (emphasis

added).² Similarly, Barassi-Jackson has no idea the amount of fill she or Jackson brought on the Property from 2020 to 2023. (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 13:5-19.)

On October 20, 2020, Kerkman emailed the Jacksons and attached the Bristol Ordinance regarding fill. (Witkov Decl. ¶ 13, Ex: 11: Dep. Ex. 9 at Bristol_157.) The email states:

As I was trying to explain this morning the permit that was issued was for the attached fill plan that you provided. It did not show filling the entire wetlands. **Also attached is our ordinance regarding fill. If the DNR does allow the fill we still need an engineer calculation that our engineer can confirm that filling in a natural wetland/detention area is not going to increase flooding upstream or downstream of the area filled. Please install the culvert and silt fence ASAP until we can solve the rest of the issues.**

(*Id.*) (emphasis added.) Kerkman expressly told the Jacksons that regardless of the DNR, the Jacksons still needed to provide engineering calculations confirming the fill in the wetland would not increase flooding upstream or downstream. (*Id.*; Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 219-20.) The Jacksons never provided Bristol with Bristol's requested calculations and engineering information to ensure water was not going to back up onto the neighbor's property. (*Id.*: Jackson Dep. 1 at 202, 211-12.)

Jackson admitted during his deposition that he understood that the August 5, 2020 Permit did not provide for filling the entire wetland area. (Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 219:15-20, 220:7-16.) Jackson further admitted that regardless of any approvals he received from the DNR, he was still required to confirm that filling the wetland area would not increase flooding upstream or downstream from the area filled. (*Id.*)

Jackson knew his actions violated the Bristol Ordinance regarding stormwater erosion control. (Witkov Decl. ¶ 14, Ex. 12: Dep. Ex. 59 at Bristol_1345.) On February 25, 2021, Kerkman emailed Jackson stating, in relevant part, “[t]hat brings us to the outstanding issue of

² Furthermore, the Jacksons admitted they did not provide Bristol or Strand with the seven items of information Bristol requested from the Jacksons on August 4, 2020. (Witkov Decl. ¶ 3, Ex.1: Jackson Dep. 1 at 211:15-211:20).

the filling of the wetland. **It is in violation of the stormwater erosion control ordinance** and as soon as that gets taken care of we would review the plans for building permits.” (*Id.* (emphasis added).)

V. On May 5, 2022, Bristol Issued A Violation Notice to Barassi-Jackson Under The Bristol Ordinances; The Jacksons Did Not Correct The Conditions In The Notice.

On April 11, 2022, during the meeting of the Bristol Board, Tina Siordia and Byron Aslett complained that the culvert under the driveway caused drainage and flooding problems by blocking the natural water flow on their property...” (Kerkman Decl. ¶ 12, Ex. 7: Bristol_1713, ¶ 7.) On May 5, 2022, the Village Administrator issued a Violation Notice to Barassi-Jackson under Bristol Ordinance Section 15-2-13. (Witkov Decl. ¶ 15, Ex.13: Dep. Ex. 16 at Bristol_665.) The Violation Notice states, in relevant part:

This letter constitutes a notice under Section 15-2-13 of the Village of Bristol Code of Ordinances. Please take notice that the property located on 128 Street, Parcel No. 37-4-121-363-0322 **is not in compliance with the requirements of Chapter 2 - Construction Site Erosion Control of the Village of Bristol Code of Ordinances, the Village of Bristol Erosion Control and Stormwater Permit dated August 5, 2020** or the terms set forth in a July 6, 2020 determination letter issued by the Wisconsin Department of Natural Resources (“DNR”). **The culvert elevations prior to and after construction have not been provided, no downstream silt fence has been installed, water has been allowed to back up on neighboring property to the west and an area greater than 0.16 acre has been filled in violation of both the Village of Bristol Erosion Control and Stormwater Permit and the DNR Determination Letter.**

You are hereby given thirty (30) days from the date of this letter to correct the conditions referenced above. Failure to do so will result in enforcement action.

(*Id.* (emphasis added).)

The Jacksons did not correct the conditions referenced in the May 5, 2022 Violation Notice within 30 days. (Kerkman Decl. ¶ 13.) To date, the Jacksons have not corrected the conditions referenced in the May 5, 2022 Violation Notice, and as a result, the Jacksons have

allowed water to back up onto the neighboring property to the west. (Kerkman Decl. ¶ 14; *see* Dkt. 25 at 10-11.) The Jacksons both admit they never provided Bristol with the requested culvert elevations prior to and after construction and never had a civil engineer verify that water was not backing up onto the neighbor's property. (Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 243; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 176, 213:15-21.)

VI. June 9, 2022 Citation For Bristol Construction Site Erosion Control Violation Under 15-2-13 And March 8, 2023 Stipulated Plea Agreement.

On June 8, 2022, Bristol reported a water erosion control violation for the Property to the Kenosha Sheriff. (Kerkman Decl. ¶ 16.) On June 9, 2022, the Kenosha Sherriff issued a citation for violation of Bristol Ordinance section 15-2-13. (Witkov Decl. ¶¶ 18-19, Exs. 15-16: Bristol_1473; Bristol_1476-80.) The citation states, in relevant part:

fact findings indicates that runoff from land disturbing construction activity carries a significant amount of sediment and other pollutants to the waters of the state in the village of Bristol . . . I was provided pictures of the said violation and I confirmed the pictures do match up exactly with what I observed on 6-9-2022. As indicated in the investigation by the Village of Bristol **there is a violation under Section 15-2-13 under construction erosion Control. Bristol ordinance Citation n1415708 Ordinance NO. 15-2-13.**

(Witkov Decl. ¶ 19, Ex. 16: Bristol_1479 (emphasis added).)³

As of July 1, 2022, the Jacksons still had not removed the excess fill from the wetland on the Property. (Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 245-49; Witkov Decl. ¶ 10, Ex. 8: Dep. Ex. 7.) Jackson admitted, however, that if there's an ordinance that applied to his property, he has to comply with it. (Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 156:24-157:2.)

On March 8, 2023, Bristol and the Jacksons entered into a Stipulated Plea Agreement, related to the Jacksons' site erosion control violation citation. (Witkov Decl. ¶ 20, Ex. 17:

³ Barassi-Jackson states Kenosha County Sheriff Officer Gomez is "abhorrent and morally corrupt" and that all of Kenosha County Sheriff staff are "puppet[s] that will do no anything directed by Randy Kerkman" and "will violate your civil liberties." (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 143-44.)

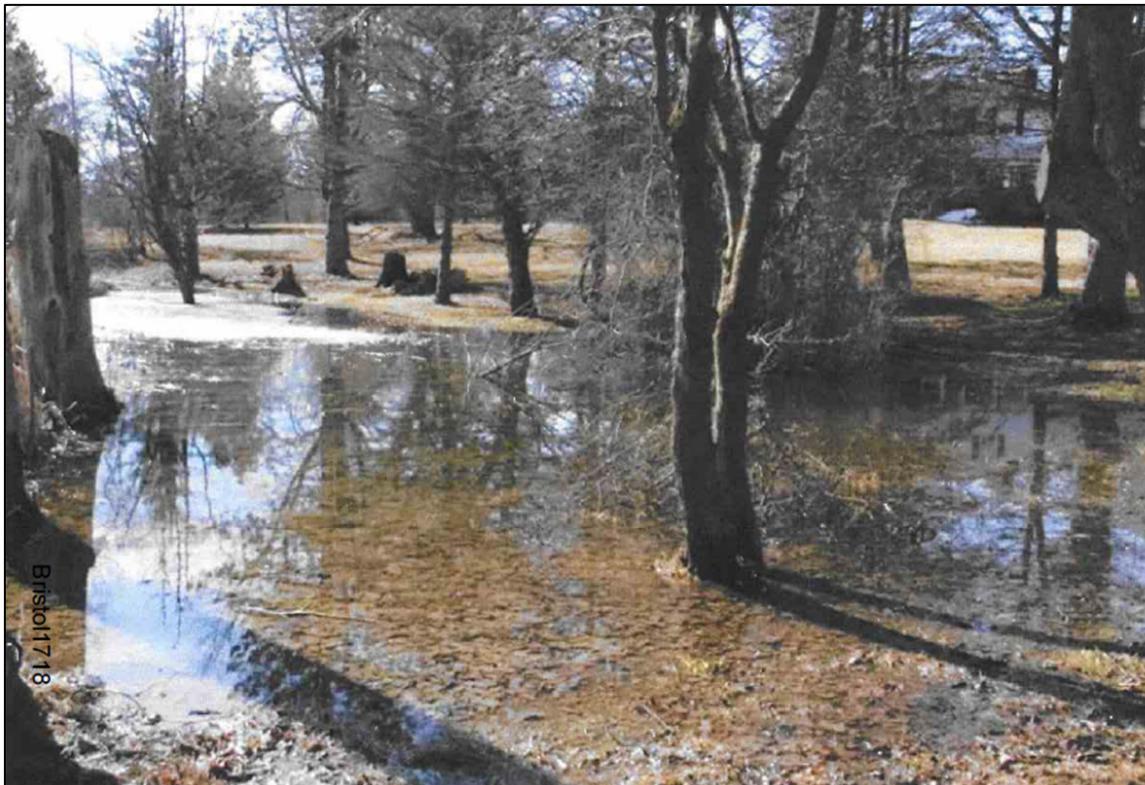
Bristol_1543.) The plea agreement stated, “**The parties & counsel agree that to each citation the defendant pleads [no contest] with a fine of \$187.**” (*Id.* at Bristol_1544 (emphasis added).) The judgment was stayed until April 17, 2023, to provide Bristol and the Jacksons time to reach a comprehensive agreement. (*Id.*) Bristol and the Jacksons never reached a comprehensive agreement.⁴

VII. In 2023, Evidence Exists That Water Continued To Back Up Onto The Jacksons’ Neighbors’ Property To The West.

In 2023, water continued to back up onto the Siordia’s property, Jacksons’ neighbors’ to the west. On March 2, 2023, Martina Siordia emailed Kerkman photos taken on February 28, 2023 showing water backing up onto the Siordia’s property after rain from February 27, 2023:



⁴ During her deposition, Barassi-Jackson testified she believes (without evidence) that her own attorney, Piermario Bertolotto, forged her signature on the Stipulated Plea Agreement. (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 158-59.) Barassi-Jackson’s unsupported accusation, while salacious, is not a disputed issue of material fact.



(Kerkman Decl. ¶ 15, Ex. 8: Bristol_1715-18, 1720.)

VIII. On August 31, 2023, Bristol Issued A Stop Work Order To The Jacksons And Revoked The August 5, 2020 Permit; The Jacksons Have Not Sought A Grading Permit Or Performed The Required Remedial Work.

On August 22 and 23 of 2023, the Siordias alleged the Jacksons dumped more fill on the Property. (Witkov Decl. ¶ 21, Ex. 18: Bristol_1649-53.) On August 31, 2023, Bristol issues a Stop Work Order and dumping dirt and filling and grading order to the Jacksons. (Witkov Decl. ¶ 22, Ex. 19: Dep. Ex. 64.) Bristol's Stop Work Order states, in relevant part:

This letter is to inform you that you must stop dumping first and filling and grading activities on your parcel #37-4-121-363-0322. You are in violation of the Village of Bristol Storm water Permit that was issued to you (copy attached). That permit is revoked.

On May 5, 2022, the Village issued a violation notice indicating that culvert elevations still had not been provided, proper erosion control was not installed, additional fill had been placed beyond the 0.16 acres indicated, and that the property owner was in violation of the permit issued by the Village on August 5, 2020 because water was backing up onto the neighboring property. The property owner was given 30 days to correct the conditions. Filling without a permit in violation of Section 13-1-46 of the Village of Bristol Ordinances.

In order to resume filling activities, you must obtain a new grading permit. This permit must include an engineered grading plan, erosion control plan, and stormwater management plan that demonstrates how the new grading activity, previous grading activity completed in excess of the prior permit or with no permit, and how the previously placed culvert impacts drainage and runoff to the subject property and upstream and downstream properties. This documentation must demonstrate conformance to Village Ordinance Section 15-3, Post-Construction Stormwater Management.

(*Id.* (emphasis added).)

The Jacksons acknowledge receipt of the Stop Work Order. (Dkt. 6 at 2: Answer ¶¶ 8, 10.) Further, Jackson admitted the Stop Work Order was clear. (Witkov Decl. ¶ 4, Ex. 3: Jackson Dep. 2 at 479-80; Witkov Decl. ¶ 22, Ex. 19: Dep. Ex. 64.) The Jacksons did not appeal the Stop Work Order. (Kerkman Decl. ¶ 17.)

Jackson admitted he did not seek to obtain a new grading permit. (Witkov Decl. ¶ 4, Ex. 2; Jackson Dep. 2 at 479-80.) Jackson admitted he did not provide Bristol with an engineered grading plan. (*Id.*) Jackson admitted he did not obtain an erosion control plan. (*Id.* at 480.) Jackson admitted he did not provide Bristol with a stormwater management plan. (*Id.*)

IX. On September 1, 2023 Bristol Filed This Lawsuit.

On September 1, 2023, Bristol filed this lawsuit against the Jacksons for violating Bristol Ordinances related to their fill and other activities on their Property. (Dkt. 3.)

On April 26, 2024, the Jacksons filed counterclaims against Bristol alleging violations of 42 U.S.C. § 1983 and seeking injunctive relief. (Dkt. 13.) On April 26, 2024, the Jacksons also filed a third-party complaint against Bristol's Village Administrator Randy Kerkman in his official capacity and against Bristol's Village Clerk Renee Brickner in her official capacity. (Dkt. 12.) On June 3, 2024, Bristol, Kerkman, and Brickner answered, denying all claims. (Dkt. 17.)

X. On December 17, 2024, Strand Issued An Expert Report Detailing The Jacksons Violations And Required Remedial Work.

On December 17, 2024, Strand issued an Expert Report (the "Strand Expert Report"). The Strand Expert Report is based on the existing conditions observed on April 25, 2024 and related to stormwater modeling. (Dkt. 25.)

A. The Jacksons' Fill Activity.

As detailed below, **Fill Area 1** is located on the southern portion of the Property and includes Berms 1 and 2, portions of the driveway, the driveway culvert, and general fill. (Dkt. 25 at 12.) Fill Area 1 includes a depressional area where stormwater runoff ponds before either infiltrating the ground or draining through the downstream culvert. (*Id.*) **Fill Area 2** is located toward the north end of the Property and is separate from the stockpile areas and covers approximately 0.15 acres. (*Id.*)

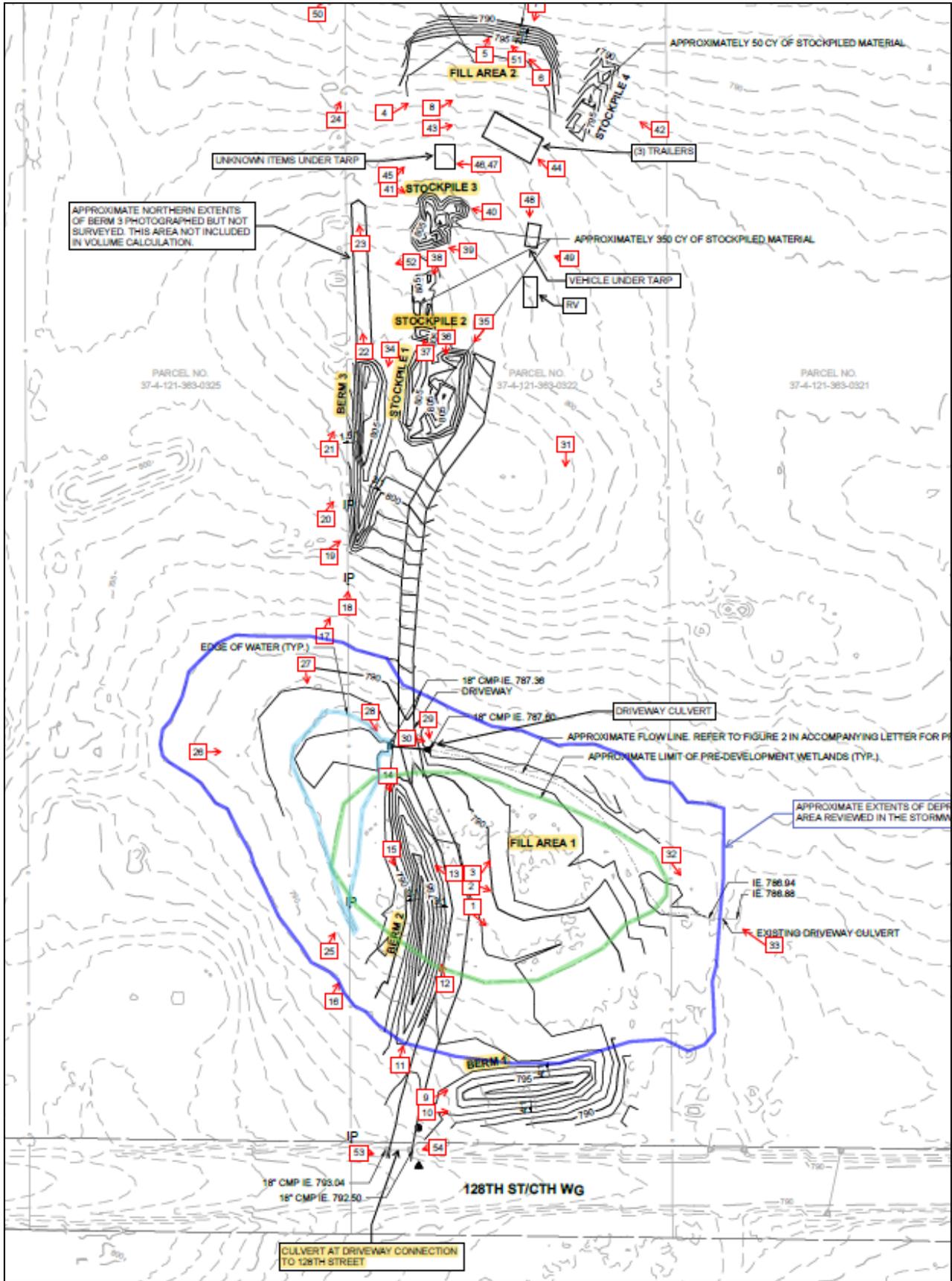
Below are pictures of Fill Area 1 and Fill Area 2 from the Strand Expert Report:

Date: April 25, 2024 Time: 1 to 3:30 P.M. By: BWW			
	1: Fill Area 1 and Berm 1 in Background	2: Fill Area 1	3: Fill Area 1 and Drainage Ditch in Background
Date: April 25, 2024 Time: 1 to 3:30 P.M. By: BWW			
	4: Fill Area 2	5: Fill Area 2 with Slope Down to Predevelopment Grade Below	6: Fill Area 2 with Slope Down to Predevelopment Grade Below

(Dkt. 25 at 36.)

The Strand Expert Report shows the Jacksons’ fill activity exceeded the amount authorized under the August 5, 2020 Permit and Bristol Ordinances. (Dkt. 25 at 5, 9.) Specifically, **the Jacksons’ fill activity totaled approximately 6,000 cubic yards of fill.** (*Id.* at 9.) The Jacksons’ fill activity exceeded the 500 cubic yards of fill authorized. (*Id.*) Just within Fill Area 1, the Jacksons filled 4,900 cubic yards of fill. (*Id.* at 5.) Within Fill Area 2, the Jacksons filled approximately 700 cubic yards of fill. (*Id.*)

Below is a diagram from the Strand Expert Report showing the existing conditions of the Property as observed on April 25, 2024. Highlighted in yellow below is Fill Area 1, Fill Area 2, Berms 1, 2, 3, and 4, and Stockpiles 1, 2, 3, and 4.



(Dkt. 25 at 12) (emphasis in yellow)

Additionally, the Strand Expert Report details the ponding difference west of the driveway on the Property for a 2, 10, 25, and 100 year rainfall event:

Rainfall Event (years)	Pre-Permit Ponding Elevation (feet)	Current Ponding Elevation West of Driveway (feet)	Ponding Difference West of Driveway (feet)	Current Ponding Elevation East of Driveway (feet)	Ponding Difference East of Driveway (feet)
2	787.69	788.85	1.16	788.08	0.39
10	788.04	789.38	1.34	788.14	0.10
25	788.16	789.77	1.61	788.18	0.01
100	788.31	790.09	1.78	788.27	(0.04)

Table 3 Comparison of Estimated Pre-Permit and Current Conditions Ponding Elevations on West and East Sides of Driveway Culvert

(*Id.* at 8; Strand Expert Report § 5.c. (emphasis added in yellow).)

B. Strand Expert Report's December 17, 2024 Findings.

The Strand Expert Report details the Jacksons' activities that violated Bristol Ordinance Sections 13-1-46, 15-2, and the August 5, 2020 Permit. (*See* Dkt. 25.) The Strand Expert Report also details a HydroCAD stormwater model that was developed to evaluate flood levels to the west and east of the current driveway on the Jacksons' Property. The HydroCAD stormwater model shows that the Jacksons' activities resulted in an increase in ponding west of the Jacksons' installed driveway culvert and reduced drainage storage capacity. (Dkt. 25 at 7-10.) Specifically, the Strand Expert Report includes the following relevant findings:

- **“Site fill activity exceeded the extents of the permitted activities related to Fill Area 1, Fill Area 2, Berm 2, Berm 3, multiple stockpiles, and a longer driveway than indicated in the permit application. Filling without a permit is a violation of Section 13-1-46 of the Village Ordinances. The fill activity totaled approximately 6,000 CY. This exceeded the 500 CY threshold which requires review by the Zoning Administrator, the Plan Commission, and the Village Board in accordance with Section 13-1-46(h) and (i).”** (Dkt. 25 at 9 (emphasis added).)
- **“Placement of fill in Fill Area 1, including Berm 2, reduced drainage storage capacity by approximately 1,900 CY. The placement of the driveway, driveway**

culvert, and grading of the flow path downstream of the driveway culvert are activities that interfered with existing drainage patterns.” (*Id.* at 9 (emphasis added).)

- “The stormwater model review of the current drainage conditions indicates that **stormwater ponding extents on the western property are beyond the pre-existing ponding extents.”** (*Id.* at 10 (emphasis added).)
- “The model indicates that **ponding west of the driveway culvert is increased by a depth of more than 1 foot for each modeled storm event due to the construction of the driveway and driveway culvert”** (*Id.* at 8 (emphasis added).)
- “**The slope of the berms that are higher than 5 feet should be corrected in accordance with the minimum slope requirements of Village Ordinance Section 13-1-46(j).** Slopes are required to not exceed 4:1 unless accompanied by a landscape plan with engineered retaining walls.” (*Id.* at 9 (emphasis added).)
- “**A portion of Berm 3 appears to have eroded, resulting in material that migrated onto the neighboring property to the west.** This situation should be rectified with the neighboring property owner and the berms should be stabilized, reconstructed, and/or appropriate erosion control measures shall be put in place until the berms are stabilized. Village Ordinance Section 13-1-46(j) indicates the following requirements.” (*Id.* at 10 (emphasis added).)
- “**The erosion control measures observed on April 25, 2024, do not comply with Section 15-2-7 of the Village Ordinances,** which state that construction activities shall incorporate the technical standards and design methods specified in the document Village of Bristol Erosion Control and Stormwater Management Requirements (Technical Standards). The 2008 Technical Standards indicate the erosion control plan and submittal requirements and reference the WDNR Technical Standards. WDNR has published technical standards related to Natural Resources Administrative Code NR 151, subchapters 3 and 4 for erosion and sediment control and stormwater management during construction (available at https://dnr.wisconsin.gov/topic/Stormwater/standards/const_standards.html.” (*Id.* at 9 (emphasis added).)
- “**An erosion control plan should be prepared by a professional engineer licensed in the State of Wisconsin and submitted to the Village for review.** The erosion control plan should provide for either perimeter erosion control or erosion control at each disturbed area as required to comply with NR 151. **Erosion control measures shall remain in place until disturbed areas are seeded and stabilized with adequate vegetative cover as required by NR 151.”** (*Id.* at 9 (emphasis added).)
- “The stormwater model review of the current drainage conditions indicates that **stormwater ponding extents on the western property are beyond the pre-existing**

ponding extents. This does not comply with the Village’s permit condition that water “not back up on property to the west.” (*Id.* at 10 (emphasis added).)

- **“The culvert pipe installed under the gravel driveway is offset approximately 280 feet from the northern ROW boundary of 128th Street (approximately 310 feet from the centerline of the roadway). This compares to 240 feet from the street as indicated on the Permit. Had the culvert been located as shown on the Permit, it would have been closer to the lowest pre-existing elevation in the driveway area.”** (*Id.* at 3 (emphasis added).)

The Strand Expert Report determined the following remedial actions could occur:

- **“The Property owner or its engineer should submit to the Village the proposed site modifications to address and correct the issues documented throughout this letter.** The submittal should be accompanied by the necessary stormwater calculations to demonstrate that ponding extents to the west match the pre-existing condition to the maximum extent practicable. This should include a site grading plan, a HydroCAD or similar model, culvert sizing calculations, a written narrative, and other information requested by the Village.” (*Id.* at 11 (emphasis added).)
- **“Appropriate permits must be obtained related to site modifications. The permit application(s) should include the documentation required by the Village Ordinances and supplemental documentation referenced herein.** The application(s) may be referred to the Zoning Administrator, Village Engineer, Director of Public Works, the Plan Commission, and Village Board as required by the Ordinance procedures.” (*Id.* (emphasis added).)
- “Practicable strategies to consider may include, but are not limited to, the following, or a combination thereof:
 - **Remove Berm 2**
 - **Relocate the driveway culvert**
 - **Add additional driveway culverts**
 - **Regrade the flow line** downstream of the driveway culvert
 - **Excavate and restore the depressional area** to increase the available storage volume
 - **Relocate the driveway to the eastern Property line** and restore the pre-existing depressional area
 - **Modify the eastern driveway and driveway culvert** with that property owner’s permission
 - Other strategies that the Property owner and its engineer may generate.

- Alternatively, the Property owner could pursue **obtaining a drainage easement on the western property** that acknowledges the current ponding extents and limits grading activities and placement of structures within the easement.”

(*Id.* (emphasis added).)

XI. Other Discovery.

On December 20, 2024, Bristol filed its witness list. (Dkt. 24.) On December 23, 2024, the Jacksons filed their witness list as defendants. (Dkt. 23.) On March 7, 2025, the Jacksons filed their witness list as counterclaimants and third-party plaintiffs. (Dkt. 26.) On April 8, 2025, Bristol, Kerkman, and Brickner filed their third-party defendant witness list. (Dkt. 30.)

Jackson was deposed on September 12, 2024 and January 20, 2025. (Witkov Decl. ¶ 23.) Barassi-Jackson was deposed on January 21, 2025. (*Id.* ¶ 24.) Kerkman was deposed on March 19, 2025. (*Id.* ¶ 25.) As of today, there are no other scheduled or noticed depositions. (*Id.* ¶ 26.)

SUMMARY JUDGMENT LEGAL STANDARD

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2). A factual dispute is genuine if “a reasonable jury could return a verdict in favor of the nonmoving party” and the dispute is material if it could affect the outcome of the trial under the applicable legal standards. *Schmidt v. Northern States Power Co.*, 2007 WI 136, ¶ 24, 305 Wis. 2d 538, 742 N.W.2d 294.

The application of ordinances to undisputed facts presents a question of law. *Browndale Int’l, Ltd. v. Board of Adjust.*, 60 Wis.2d 182, 199, 208 N.W.2d 121 (1973); *Eastman v. City of Madison*, 117 Wis. 2d 106, 112, 342 N.W.2d 764 (Ct. App. 1983). The rules for the construction of statutes and ordinances are the same. *County of Sauk v. Trager*, 113 Wis. 2d 48, 55, 334 N.W.2d 272 (Ct. App. 1983).

APPLICABLE STATUTES / ORDINANCES

I. **Wis. Stat. §§ 62.23(7) (Zoning) And 62.234 (Construction Site Erosion Control And Storm Water Management Zoning) Are The Applicable Wisconsin Statutes.**

Bristol has authority over permitting within the Village under Wis. Stat. § 62.23(7)(f)2. Wis. Stat. ch. 62 concerns “**cities.**” Wis. Stat. § 62.23(7) is titled “**Zoning.**” Under Wis. Stat. ch. 61, titled “**Villages,**” “Section 62.23 applies to villages, and the powers and duties conferred and imposed by s. 62.23 upon mayors, councils and specified city officials are hereby conferred upon presidents, village boards, and village officials...” Wis. Stat. § 61.35 (Village planning). Section 62.23(7)(f) concerns “**Enforcement and remedies.**” Section 62.23(7)(f)2 states,

In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of this section or of any ordinance or other regulation made under authority conferred hereby, the proper authorities of the city, or any adjacent or neighboring property owner who would be specially damaged by such violation may, in addition to other remedies, institute appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use; to restrain, correct or abate such violation; to prevent the occupancy of said building, structure or land; or to prevent any illegal act, conduct, business or use in or about such premises.

Wis. Stat. § 62.23(7)(f)2. (emphasis added.)

Wis. Stat. § 62.234 is titled “**Construction site erosion control and storm water management zoning.**” Section 62.234(2) is titled “**Authority to Enact Ordinance**” and states,

To effect the purposes of s. 281.33 and to promote the public health, safety and general welfare, **a city may enact a zoning ordinance**, that is applicable to all of its incorporated area, **for construction site erosion control at sites described in s. 281.33 (3) (a) 1. a. and b. and for storm water management.** This ordinance may be enacted separately from ordinances enacted under s. 62.23. An ordinance enacted under this subsection is subject to the strict conformity requirements under s. 281.33 (3m).

Wis. Stat. § 62.234(2) (emphasis added.)

II. Bristol Ordinance Title 13 (Zoning), Section 13-1-46 (Filling Activities).

Title 13 of the Bristol Ordinances is titled “**Zoning**.” Chapter 1 of Title 13 is titled “**Zoning Code**.” (Kerkman Decl. ¶ 3, Ex. 1.) Section 13-1-46 is titled “**Filling Activities**.” (*Id.* at 30.) Section 13-1-46(a) is titled “**Purpose**” and states that the Purpose of the Filling Activities section within Bristol’s Zoning Ordinance is:

- (1) **To regulate filling activities in order to avoid or mitigate negative impacts of changes to existing drainage patterns.**
- (2) **To monitor the amount and type of material brought into the Village or transferred between sites within the Village of Bristol.**
- (3) **To prevent the creation of hazardous conditions or nuisances from filling activities.**
- (4) To prevent conflict with the installation of future underground public utilities.
- (5) **To promote the public health, safety and general welfare of the citizens of the Village of Bristol without preventing the reasonable development of land.**
- (6) To encourage site development on public and private property in such a manner as to minimize hazards to life, health, property and natural resources.
- (7) To preserve and enhance the Village’s physical and aesthetic character.
- (8) **To minimize surface water runoff and diversion which may contribute to flooding and erosion.**
- (9) To reduce siltation in the Village’s streams and storm sewer system, and public roadside improvements, and in area streams and waterways.
- (10) To promote building and site planning practices that are consistent with the Village’s natural topography, soils, and vegetative features.

- (11) To implement and further the Village's Comprehensive Plan and its components.

(*Id.* at 31: Sec. 13-1-46(a)) (emphasis added.)

Section 13-1-46(i) is titled "**Review by Plan Commission and Village Board,**" and states, in relevant part,

The Zoning Administrator shall review for completeness and compliance with this Section all applications for fill activities involving over **five hundred (500) cubic yards of fill material**. The Zoning Administrator shall refer to the Plan Commission for review all completed applications for such fill activities. The Zoning Administrator shall return to the applicant any application that is not a completed application. **After review and recommendation by the Plan Commission, the Village Board shall approve, disapprove, or conditionally approve all completed applications for fill activities involving over five hundred (500) cubic yards of fill material**

(*Id.* at 34-35: Sec. 13-1-46(i)) (emphasis added.)

Section 13-1-46(j) is titled "**Standards for Approval.**" Section 13-1-46(j) states, in relevant part,

- (1) **The operation shall not interfere with existing drainage patterns. If the fill does interfere with existing drainage patterns, the applicant shall bear the burden of establishing that the interference does not have a negative impact on adjoining properties** or on other properties, streams, or waterways, including, but not limited to, the creation or contribution to landslides, flooding, erosion, increased turbidity, siltation, or other form of pollution to a water course or water body.

- (7) Fill slopes shall not be constructed on natural slopes which are steeper than four (4) horizontal to one (1) vertical (4:1). Any proposed slope that would exceed the 4:1 standard shall require the submittal of a landscaping plan.
- (8) The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes exceeding five (5) feet in depth shall be no steeper than four (4) horizontal to one (1) vertical (4:1), except where approved retaining walls are engineered and installed. Any

proposed slope that would exceed the 4:1 standard shall require the submittal of a landscaping plan.

- (9) **When the owner of any parcel shall raise, lower or alter the level or existing grade of a site by a fill or excavation, he/she shall at his/her own expense protect all adjoining property from encroachment by such fill** or from danger of collapse due to such excavation either by the erection of an engineered retaining wall or by sloping the sides of such fill or excavation entirely within the confines of the site **in a manner approved by the Zoning Administrator** or Village Board.
- (10) **When the owner of any parcel shall raise, lower or alter the level or existing grade of a site by a fill or excavation, he/she shall at his/her own expense protect all adjoining property from encroachment by such fill** or from danger of collapse due to such excavation either by the erection of an engineered retaining wall or by sloping the sides of such fill or excavation entirely within the confines of the site **in a manner approved by the Zoning Administrator** or Village Board.
- (11) **The faces of slopes shall be prepared and maintained to control erosion.** Check dams, riprap, plantings, terraces, diversion ditches, sedimentation ponds, straw bales, erosion control fabrics or other devices or methods shall be employed where necessary to control erosion and provide safety. Devices or procedures for erosion protection shall be initiated or installed before grading operations and shall be maintained in operable condition by the owner.

(*Id.* at 35-36: Sec. 13-1-46(j)(1), (7)-(11) (emphasis added.))

Section 13-1-46(k) is titled “**Restrictions Governing Permit Holders.**” Section 13-1-46(k) states, in relevant part,

- (k) **Suspension or Revocation of Permit.** Any permit granted under these regulations may be suspended or revoked for failure to comply with any provisions of this Section or with any of the performance standards, conditions, restrictions or requirements attached and imposed as part of the issuance of a permit. **The Zoning Administrator** or his/her designee **may suspend a permit and issue a stop work order if there are grounds to reasonably believe that any provision of this Section or any condition of the permit is being violated.**

(*Id.* at 36: Sec. 13-1-46(k) (emphasis added.))

Section 13-1-46(o) is titled “**Suspension of Revocation of Permit,**” and states, in relevant part,

Any permit granted under these regulations may be suspended or revoked for failure to comply with any provisions of this Section or with any of the performance standards, conditions, restrictions or requirements attached and imposed as part of the issuance of a permit. **The Zoning Administrator or his/her designee may suspend a permit and issue a stop work order if there are grounds to reasonably believe that any provision of this Section or any condition of the permit is being violated.**

(*Id.* at 38: Sec. 13-1-46(o) (emphasis added).)

III. Bristol Ordinance Title 15 (Building Code), Chapter 2 (Construction Site Erosion Control).

Chapter 2 of Title 15 is titled “**Construction Site Erosion Control.**” (Kerkman Decl. ¶ 4, Ex. 2: Title 15, Chapter 2.) Pursuant to Bristol Ordinance No. 2016-9, Bristol repealed in its entirety “Title 15, Chapter 2” titled “Construction Site Erosion Control” and replaced it with a new Construction Site Erosion Control ordinance. (*Id.*)

Section 15-2-4 is titled “**Applicability and Jurisdiction**” and states, in relevant part,

- (a) **Applicability.** Except as provided under Subsection (b) below, this Chapter applies to the following land disturbing construction activities:

- (4) **Grading**, removal of protective ground cover or vegetation, excavation, **landfilling or land disturbing activity within two hundred (200) feet of a lake, stream, or wetland when work affects more than ten (10) cubic yards of material.**

- (c) **Village Staff Determination.** Notwithstanding the applicability requirements in Subsection (a), **this Chapter applies to construction sites of any size that, in the opinion of the Village staff, are likely to result in runoff that exceeds the safe capacity of the existing drainage facilities or receiving body of water, that causes undue channel erosion, that increases water pollution by scouring or the transportation of particulate matter or that endangers property or public safety.**

- (d) **Jurisdiction.** This Chapter applies to land disturbing activities on lands within the boundaries and jurisdiction of the Village of Bristol, as well as the extraterritorial division of land subject to an ordinance enacted pursuant to Section 236.45(2) and (3), Wis. Stats.

(*Id.* at 3-4: Sec. 15-2-4(a)(4), (c) and (d) (emphasis added).)

Section 15-2-7 is titled “**Technical Standards,**” and states, in relevant part:

The following best management practice methods (BMPs) shall be used in designing and maintaining the water quality, peak discharge, infiltration, protective area, and fueling/vehicle maintenance components of storm water practices needed to meet the water quality standards of this Chapter:

- (a) **Design Criteria, Standards and Specifications.** All drainage facilities and practices required to comply with this Chapter shall incorporate technical standards and design methods specified in the document *Village of Bristol Erosion Control and Stormwater Management Requirements*, maintained and periodically updated by the Director of Public Works/Village Engineer. Where not superseded by stricter requirements in *Village of Bristol Erosion Control and Stormwater Management Requirements*, the following standards are also incorporated by reference:
- (1) Applicable design criteria, standards and specifications identified in the Wisconsin Construction Site Best Management Practice Handbook, WDNR Pub. WR-222, November 1993 Revision.
 - (2) Other design guidance and technical standards identified or developed by the Wisconsin Department of Natural Resources under Subchapter V of NR 151, Wis. Adm. Code.
 - (3) Soil loss prediction tools [such as the Universal Soil Loss Equation (USLE)] when using an appropriate rainfall or runoff factor (also referred to as the "R factor") or an appropriate design storm and precipitation distribution, and when considering the geographic location of the site and the period of disturbance.
- (b) **Other Standards.** Other technical standards not identified or developed in Subsection (a) may be used provided that the methods have been approved by the Director of Public Works/Village Engineer.

(*Id.* at 8: Sec. 15-2-7.)

Section 15-2-14 is titled “**Enforcement**”⁵ and states, in relevant part,

- (a) **Stop-Work Order Issuance.** The Director of Public Works/Village Engineer may post a stop-work order if any of the following occurs:
- (1) **Any land disturbing construction activity regulated under this Chapter is being undertaken without a permit.**
 - (2) **The erosion and sediment control plan is not being implemented in a good faith manner.**
 - (3) **The conditions of the permit are not being met.**
- (b) **Improper Activity to Cease.**
- (1) ***Permit Revocation.*** If the responsible party does not cease activity as required in a stop-work order posted under this Section or fails to comply with the erosion and sediment control plan or permit conditions, the Director of Public Works/Village Engineer may revoke the permit.
- ***
- (e) **Forfeiture Penalty.** Any person, firm, association, or corporation violating any of the provisions of this Chapter shall be subject to a forfeiture of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) and the costs of prosecution for each violation. Each day that the violation exists shall constitute a separate offense. Such forfeiture(s) may be in addition to other penalties under this Chapter.
- (f) **Injunction.** Compliance with the provisions of this Chapter may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.

(*Id.* at 14: Section 15-2-14(a)(1)-(3), (b), (e), and (f) (emphasis added).)

⁵ Prior to Ordinance No. 2016-9, Section 15-2-13 was titled “Enforcement.” (Kerkman Decl. ¶ 5.)

ARGUMENT

I. The Court Should Award Bristol Summary Judgment Because The Jacksons Violated The August 5, 2020 Permit.

As detailed above and below, the Jacksons construction and fill activity violated both the August 5, 2020 Permit and Bristol Ordinances. In the August 5, 2020 Permit, the Jacksons, “[r]equest permit to install culverts as indicated and to truck in dirt to complete berms as indicated.” (Witkov Decl. ¶ 12, Ex. 10; Dep. Ex. 69 at 1 (emphasis added).)

The Jacksons repeatedly refused to comply with Bristol’s pre-permit requirements. For instance, the Jacksons refused to provide the pre-permit information repeatedly requested by Bristol both through Kerkman and Strand, including:

- Existing culvert size, length, material, and whether it would be left in place
- Proposed driveway elevation
- Proposed culvert size, material, length, and slope
- Storm flow directions
- Proposed fill locations
- Depth of water in the wetlands
- Photographs of the existing conditions

(Witkov Decl. ¶ 11, Ex. 9; Dep. Ex. 56; Dkt. 25 at 1-2; Strand Expert Report § 3; Witkov Decl. ¶ 5, Ex. 3; Barassi-Jackson Dep. at 118, 122; Witkov Decl. ¶ 10, Ex. 8; Dep. Ex. 7; Witkov Decl. ¶ 3, Ex. 1; Jackson Dep. 1 at 211.)

The Jacksons not only refused to provide the pre-permit information requested by Bristol, but the Jacksons also deemed Bristol’s requested information to be “crazy shit” and that Bristol was “fuckin with us” by requesting this information. (Witkov Decl. ¶ 5, Ex. 3; Barassi-Jackson Dep. at 129; Witkov Decl. ¶ 4, Ex. 2; Jackson Dep. 2 at 430.)

Based on the Jacksons’ limited request in their July 28, 2020 Permit Application— “[r]equest permit to install culverts as indicated and to truck in dirt to complete berms as indicated”—Bristol approved the Jacksons’ July 28, 2020 Permit Application with the express

limitation: “[p]er **Plan since Engineering not done prior to Permit Applicant is Responsible so water does not back up on neighbors property to the west. RR[.]**” (Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 1.) Kerkman also emailed Barassi-Jackson the August 5, 2020 Permit, stating, “Engineering information we requested was to help make sure water was not going to back up on to your neighbors property. **Since you refuse to do the engineering work prior you are responsible if water backs up to correct the situation.**”(Witkov Decl. ¶ 9, Ex. 7: Bristol_347 (emphasis added).)

After Bristol issued the August 5, 2020 Permit, the Jacksons refused to comply with the conditions and requirements of the August 5, 2020 Permit. Notably, the Jacksons **did not** “install culverts as indicated [on the June 30, 2019 Plat of Survey]” **nor did they merely** “truck in dirt to complete berms as indicated.” (Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 1 (emphasis added).) Rather, the Jacksons took numerous and repeated actions that were not authorized or compliant with the August 5, 2020 Permit and Bristol Ordinances.

A. The Jacksons’ Failure to Install Culverts As Indicated on the August 5, 2020 Permit Resulted in Water Backing Up on to Neighbor to the West.

The Jacksons did not “install culverts as indicated [on the June 30, 2019 Plat of Survey].” The Jacksons’ June 30, 2019 Plat of Survey, which was attached to their July 28, 2020 Permit Application and is a part of the August 5, 2020 Permit, indicated that the culvert pipe would be installed under the gravel driveway and would be offset 240 feet from the street. (Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 2.) Instead, the culvert pipe that the Jacksons installed under the gravel driveway was offset approximately **280 feet** from the northern ROW boundary of 128th Street (approximately 310 feet from the centerline of the roadway). (Dkt 25 at 3.) Had the culvert been located as shown on the August 5, 2020 Permit, it would have been closer to the lowest-pre-existing elevation in the driveway. (*Id.*)

The Strand Expert Report held, “**the ponding west of the driveway culvert increased by a depth of more than 1 foot for each modeled storm event due to the construction of the driveway and driveway culvert**, and is potentially impacted by the flow impedance in the flow line downstream (east) of the culvert.” (Dkt 25 at 8: Strand Expert Report § 5.c) (emphasis added). The Strand Expert Report also held, “**the placement of the driveway, driveway culvert, and grading of the flow path downstream of the driveway culvert are activities that interfered with existing drainage patterns.**” (*Id.* at 9 (emphasis added).) The Strand Expert Report further held, “[t]he modeled results of the 25- and 100-year events are likely indicative of the **driveway and culvert impeding flow upstream of the culvert.**” (*Id.* (emphasis added).)

The result of the Jacksons failing to install culverts as indicated on the June 30, 2019 Plat of Survey was water backing up on the neighbors property to the west, in violation of the August 5, 2020 Permit. (Dkt. 25 at 9-10; Kerkman Decl. ¶ 15, Ex. 8: Bristol_1715-18, 1720.) The Jacksons’ placement of the driveway, driveway culvert, and grading of the flow path downstream of the driveway culvert interfered with existing drainage patterns. (Dkt. 25. at 9.)

B. The Jacksons’ Failure to Install Berms As Authorized on the August 5, 2020 Permit Resulted in Water Backing Up On Neighbor to the West.

The Jacksons did not merely “truck in dirt to complete berms as indicated [on the June 30, 2019 Plat of Survey].” Rather, they built Berm 2 that was not listed on and not authorized by the August 5, 2020 Permit. The Jacksons’ construction of Berms 1 and 3 were also not compliant with the August 5, 2020 Permit. The Jacksons’ failure to construct the Berms consistent with the August 5, 2020 Permit caused water to backup on the Jacksons’ neighbor to the west.

The Jacksons’ June 30, 2019 Plat of Survey, which was attached to their July 28, 2020 Permit Application and is incorporated into the August 5, 2020 Permit, only contains Berm 1 and Berm 3 – not Berm 2. (Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 2.) Barassi-Jackson admitted

that the Jacksons' July 28, 2020 Permit Application and the August 5, 2020 Permit does not seek or permit the Jacksons to build Berm 2. (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 38:25-39:3). The Jacksons' construction of Berm 2 was part of the problem that caused water to back up on the Jacksons' neighbor to the west. As the Strand Expert Report found, “[p]lacement of fill in Fill Area 1, including **Berm 2, reduced drainage storage capacity by approximately 1,900 CY.**” (Dkt. 25 at 9 (emphasis added).) The Strand Expert Report recommended to “[r]emove Berm 2.” (*Id.* at 11.)

The Jacksons' fill in Berms 2 and 3 also violated the August 5, 2020 Permit and contributed to water backing up on the Jacksons' neighbor to the west. The Jacksons failed to construct the slopes of Berms 2 and 3 consistent with Bristol Ordinance Section 13-1-46(j). The Strand Expert Report found that “the slopes of Berm 2 vary and are generally 3:1 on the eastern slope that faces the driveway and 2:1 on the western slope that faces the western Property line.” (Dkt. 25 at 4.) The Strand Expert Report also found that “[t]he slopes of Berm 3 vary and are generally 3:1 on the eastern slope that faces the driveway and 1.5:1 on the western slope that faces the western Property line.” (*Id.*) Under Bristol Ordinance Section 13-1-46(j), “[f]ill slopes shall not be constructed on natural slopes which are steeper than four (4) horizontal to one (1) vertical (4:1).” (Kerkman Decl. ¶ 3, Ex. 1 at 34: Section 13-1-46(j).)

The Strand Expert Report further found the silt fences on Berms 2 and 3 were failed and no silt fence was observed near Berm 1. (Dkt. 25 at 4.) The Jacksons' improper construction of the Berms coupled with the failed silt fence contributed to water backing up on the Jacksons' neighbor to the west. As the Strand Expert Report held, “[b]are soil on the neighboring property to the west in the vicinity of Berm 3 may be indicative of material migrating from Berm 3.” (*Id.*) The Strand Expert Report found “[a] portion of Berm 3 appears to have eroded, resulting in

material that migrated onto the neighboring property to the west.” (*Id.* at 10.) The Strand Expert Report concluded, “the berms should be stabilized, reconstructed, and/or appropriate erosion control measures should be put in place until the berms are stabilized.” (*Id.*)

C. The Jacksons Failed to Comply With Bristol Ordinances.

As detailed below, the Jacksons were required to comply with the Bristol Ordinances in addition to the August 5, 2020 Permit. The Jacksons failed to do so. Consequently, the Court should find that the Jacksons breached the August 5, 2020 Permit and the Bristol Ordinances.

II. The Court Should Award Bristol Summary Judgment Because The Jacksons Violated Bristol Ordinance Section 13-1-46, Filling Activity Without A Permit.

The Jacksons conducted filling activity on the Property without a permit in violation of Bristol Ordinance Section 13-1-46. The Jacksons improper fill activity occurred in Fill Area 1, Fill Area 2, stockpiles throughout the Property, and a longer than permitted driveway. Specifically, the Jacksons’ fill activity violated Bristol Ordinance 13-1-46(h) and (i) (as authorized by Wis. Stat. § 62.23(7)(f)2) and the August 5, 2020 Permit.

The August 5, 2020 Permit states, “[r]equest permit to install culvert as indicated **and to truck in dirt to complete berms as indicated.**” (Witkov Decl. ¶ 6, Ex. 6: Dep. Ex. 6.) The Jacksons’ June 20, 2019 Plat of Survey was incorporated into the August 5, 2020 Permit. (Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 2; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 28, 211-212; Kerkman Decl. ¶ 18.) The Jacksons’ permitted activities under the August 5, 2020 Permit included:

- Installation of a driveway. Previous correspondence with the Wisconsin Department of Natural Resources (WDNR), included in Appendix B, indicated that approximately 0.16 acres of a delineated 0.9-acre wetland would be filled in order to accommodate the installation of the driveway.
- Installation of a 40-foot-long driveway culvert that was 240 feet from the street.

- Installation of a 165-foot-long berm of unknown width in an east-west orientation near the right-of-way (ROW) of 128th Street (referred to as **Berm 1**).
- Installation of a 120-foot-long berm in a north-south orientation on the northern half of the parcel along the west Property line (referred to as **Berm 3**).

(*Id.*; Dkt. 25 at 1-2.) No areas of general fill were listed on the August 5, 2020 Permit or the Jacksons' July 28, 2020 Permit Application. (*Id.*)

A. The Jacksons Violated Bristol Ordinance Section 13-1-46(i) By Bringing Approximately 6,000 Cubic Yards of Fill on Their Property.

The Jacksons violated Bristol Ordinance Section 13-1-46(i) (Review by Zoning Administrator) by bringing approximately 6,000 cubic yards of fill on their Property. Under Bristol Ordinance Section 13-1-46(i), the Jacksons were not authorized to bring **over 500 cubic yards of fill** on the Property.

Bristol Ordinances 13-1-46(i) concerns approval for filling activity over 500 cubic yards. Under Section 13-1-46(i), “[a]fter review and recommendation by the Plan Commission, the Village Board shall approve, disapprove or conditionally approve all completed applications for fill activities involving **over five hundred (500) cubic yards of fill material . . .**” (*Id.* at 33-34: Section 13-1-46(i) (emphasis added).)

As detailed in the Strand Expert Report, the Jacksons brought approximately 6,000 cubic yards of fill on the Property. (Dkt. 25 at 9.) The Jacksons' fill activity consisted of the following: **(1)** bringing 4,900 cubic yards of fill onto Fill Area 1; **(2)** bringing 700 cubic yards of fill onto Fill Area 2; **(3)** bringing over 500 cubic yards of fill on the Property to construct Berm 2; **(4)** bringing more than 50 cubic yards of fill on the Property to construct Berm 3; and **(5)** bringing more than 50 cubic yards of fill on the Property for the gravel driveway. (Dkt. 25 at 3, 5; Kerkman Decl. ¶ 3, Ex. 1 at 34: Sec. 13-1-46(i); Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 1-2; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 28, 38:11-39:3, 211-12.)

Since the Jacksons brought approximately 6,000 cubic yards of fill on the Property, they were required to obtain review and recommendation by the Plan Commission and Bristol Board. Here, the Jacksons failed to seek or obtain review and recommendation by the Plan Commission and Bristol Board. As a result, the Jacksons violated Section 13-1-46(i).

B. The Jacksons Violated Bristol Ordinance Sections 13-1-46(d)(1) and (e)(1) By Bringing Approximately 6,000 Cubic Yards of Fill on Their Property.

Because the Jacksons brought 6,000 cubic yards of fill on the Property without a permit, the Jacksons violated Bristol Ordinance Sections 13-1-46(d)(1) (Prohibitions) and (e)(1) (Permit Required). Under Section 13-1-46(d)(1), “[n]o person shall engage in any activity that involves fill material without a permit, except as provided by this Section.” (Kerkman Decl. ¶ 3, Ex. 1 at 31; Section 13-1-46(d)(1).) Under Section 13-1-46(e), “[a] permit **shall be required** for any activity that involves fill material as defined herein being brought onto a property from an off-site location.” (*Id.*: Section 13-1-46(e)(1).)

Here, the Jacksons admit they caused fill to be brought on their Property from an off-site location. (Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 16:21-17:23; Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 116:1-4; Witkov Decl. ¶ 5, Ex. 3: Jackson Dep. 2 at 267:16-18.) The Jacksons admitted they do not know *how much fill* was brought onto their property – and therefore cannot dispute the Strand Expert Report’s finding that the Jacksons brought approximately 6,000 cubic yards of fill onto their Property, which is significantly more than permitted. (Witkov Decl. ¶ 3, Ex. 1: Jackson Dep. 1 at 216:22-217:01; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 13:5-19.) As a result, the Jacksons violated Section 13-1-46(d)(1) by engaging in fill activity without a proper permit. Additionally, the Jacksons violated Section 13-1-46(e)(1) by bringing in excess of 500 cubic yards of fill on their Property from an off-site location without a proper permit.

C. The Jacksons Violated Bristol Ordinance Section 13-1-46(j)(1) Because Their Placement of the Driveway, Driveway Culvert, and Grading Activity Interfered With Existing Drainage Patterns.

The Jacksons violated Bristol Ordinance Section 13-1-46(j)(1) because the Jacksons' placement of the driveway, driveway culvert, and grading activity interfered with existing drainage patterns. Section 13-1-46(j)(1) concerns Standards for Approval related to existing drainage patterns. Under Section 13-1-46(j)(1),

The operation shall not interfere with existing drainage patterns. If the fill does interfere with existing drainage patterns, the applicant shall bear the burden of establishing that the interference does not have a negative impact on adjoining properties or on other properties, streams, or waterways, including, but not limited to, the creation or contribution to landslides, flooding, erosion, increased turbidity, siltation, or other form of pollution to a water course or water body.

(Kerkman Decl. ¶ 3, Ex. 1 at 34: Section 13-1-46(j)(1) (emphasis added).)

Here, the Strand Expert Report shows the Jacksons' activity interfered with existing drainage patterns. Specifically, the Strand Expert Report states, "**Placement of fill in Fill Area 1, including Berm 2, reduced drainage storage capacity by approximately 1,900 CY. The placement of the driveway, driveway culvert, and grading of the flow path downstream of the driveway culvert are activities that interfered with existing drainage patterns.**" (Dkt. 25 at 9 (emphasis added).) Notably, as the Strand Expert Report found,

[t]he culvert pipe installed under the gravel driveway is offset approximately 280 feet from the northern ROW boundary of 128th Street . . . [t]his compares to 240 feet from the street as indicated on the Permit. Had the culvert been located as shown on the Permit, it would have been closer to the lowest pre-existing elevation in the driveway area.

(Dkt. 25 at 3; Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 2; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 28, 211-212.) Thus, had the Jacksons placed the culvert pipe where they

indicated on the Jacksons' June 20, 2019 Plat of Survey, there would have been less likelihood that the Jacksons would have interfered with existing drainage patterns.

The Strand Expert Report further found, “[t]he stormwater model review of the current drainage conditions indicates that stormwater ponding extents on the western property are beyond the pre-existing ponding extents.” (Dkt. 25 at 10.) Additionally, the Strand Expert Report states, “[t]he model indicates that ponding west of the driveway culvert is increased by a depth of more than 1 foot for each modeled storm event due to the construction of the driveway and driveway culvert” (Dkt. 25 at 8.) The Strand Expert Report also held, “[t]he modeled results of the 25- and 100-year events are likely indicative of the **driveway and culvert impeding flow upstream of the culvert.**” (*Id.*) (emphasis added).

The Strand Expert Report therefore shows the Jacksons' placement of the driveway, driveway culvert, and grading activity interfered with existing drainage patterns. The Jacksons do not and cannot dispute this material fact. The Court should therefore find that the Jacksons violated Section 13-1-46(j)(1).

D. The Jacksons Violated Bristol Ordinance Sections 13-1-46(j)(7) and (8) Because They Created Slopes On Berms 2 and 3 That Are Too Steep.

The Jacksons violated Bristol Ordinance Sections 13-1-46(j)(7) and (8) because they created slopes on Berms 2 and 3 that are steeper than 4 horizontal to 1 vertical and failed to submit the required landscaping plan. As stated above, Section 13-1-46(j) concerns “Standards for Approval.” Section 13-1-46(j)(7) and (8) concern fill slopes.

Section 13-1-46(j)(7) states, “Fill slopes shall not be constructed on natural slopes which are steeper than four (4) horizontal to one (1) vertical (4:1). Any proposed slope that would exceed the 4:1 standard shall require the submittal of a landscaping plan.” (Kerkman Decl. ¶ 3, Ex. 1 at 35: Section 13-1-46(j)(7).)

Section 13-1-46(j)(8) states, “The slopes of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes exceeding five (5) feet in depth shall be no steeper than four (4) horizontal to one (1) vertical (4: 1), except where approved retaining walls are engineered and installed. Any proposed slope that would exceed the 4: 1 standard shall require the submittal of a landscaping plan.” (*Id.*: Section 13-1-46(j)(8)).

Here, the Strand Expert Report shows the Jacksons’ created slopes on berms 2 and 3 that are steeper than 4 horizontal to 1 vertical. Regarding Berm 2, the Strand Expert Report found, “[t]he slopes of Berm 2 vary and are generally 3:1 on the eastern slope that face the driveway and 2:1 on the western slope that faces the western Property line.” (Dkt. 25 at 4.) Regarding Berm 3, the Strand Expert Report found, “[t]he slopes of Berm 3 vary and are generally 3:1 on the eastern slope that faces the driveway and 1.5:1 on the western slope that faces the western Property line.” (*Id.*)

The Strand Expert Report therefore shows that the slopes the Jacksons created on Berms 2 and 3 do not comply with Section 13-1-46(j)(7) because they are steeper than four (4) horizontal to one (1) vertical. Furthermore, the Jacksons failed to submit a landscaping plan or used approved retaining walls that were engineered and installed. Consequently, the Court should find that the Jacksons violated Section 13-1-46(j)(7) and (8).

E. The Jacksons Violated Bristol Ordinance Section 13-1-46(j)(9) and (11) Because They Failed to Maintain Erosion Control For Berms 1 and 3.

The Jacksons violated Bristol Ordinance Sections 13-1-46(j)(9) and (11) because they failed to maintain erosion control for Berms 1 and 3 because the silt fence was in a failed condition and fallen down. Bristol Ordinance Sections 13-1-46(j)(9) and (11) require standards for approval relating to fill permits concerning raising or lowering grade or slopes. Section 13-1-46(j)(9) and (11) states:

- (9) When the owner of any parcel shall raise, lower or alter the level or existing grade of a site by a fill or excavation, he/she shall at his/her own expense protect all adjoining property from encroachment by such fill or from danger of collapsed due to such excavation either by the erection of an engineered retaining wall or by sloping the sides of such fill or excavation entirely within the confines of the site in a manner approved by the Zoning Administrator or Village Board.

- (11) **The faces of slopes shall be prepared and maintained to control erosion.** Check dams, riprap, plantings, terraces, diversion ditches, sedimentation ponds, straw bales, **erosion control fabrics or other devices or methods shall be employed where necessary to control erosion and provide safety.** Devices or procedures for erosion protection **shall be initiated or installed before grading operations and shall be maintained in operable condition by the owner.**

(Kerkman Decl. ¶ 3, Ex. 1 at 35: Section 13-1-46(j)(9), (11) (emphasis added).)

The Jacksons violated Sections 13-1-46(j)(9) and (11) because they failed to maintain erosion control regarding Berms 1 and 3. Specifically, no silt fence was observed near Berm 1. (Dkt. 24 at 4). Further, the silt fence on the western edge of Berm 3 is in a failed condition and has fallen down. (Dkt. 25 at 4). Additionally, a portion of Berm 3 has eroded, resulting in material that migrated onto the neighboring property to the west. (Dkt. 25 at 4). As the Strand Expert Report found, the Berms need to be stabilized, reconstructed, and/or appropriate erosion control measures are required until the berms are stabilized. (*Id.* at 4, 10).

Because the faces of slopes on Berms 1 and 3 are not maintained to control erosion, the Court should find that the Jacksons violated Sections 13-1-46(j)(9) and (11).

III. The Court Should Award Bristol Summary Judgment Because The Jacksons Violated Bristol Ordinance Section 15-2, Construction Site Erosion Control.

The Court should also award Bristol summary judgment because the Jacksons violated Bristol Ordinance Section 15-2 titled “Construction Site Erosion Control.” The purpose of Section 15-2 is to prevent and control soil erosion and sediment discharge, land use, and regulate runoff from land disturbing construction activities. (Kerkman Decl. ¶ 4, Ex. 2 at 3: Section 15-2-

3.) Here, the undisputed evidence proves the Jacksons violated Section 15-2 through their unauthorized activity on the Property.

A. The Jacksons Violated Bristol Ordinance Section 15-2-7 By Not Complying with Technical Standards, Including Having a Proper Erosion Control Plan.

The Jacksons' violated Bristol Ordinance Section 15-2-7 by not complying with the required Technical Standards and not having a proper erosion control plan relating to their fill activity and other work on the Property. Section 15-2-7 is titled "**Technical Standards**" and states, in relevant part under subsection (a) "**Design Criteria, Standards and Specifications,**" that "[a]ll drainage facilities and practices required to comply with this Chapter shall incorporate technical standards and design methods specified in the document *Village of Bristol Erosion Control and Stormwater Management Requirements[.]*" (Kerkman Decl. ¶ 4, Ex. 2 at 8: Section 15-2-7.) Section 15-2-7 and the Technical Standards requires an erosion control plan to be prepared by a professional engineer licensed in the State of Wisconsin and submitted to Bristol for review. (*Id.*; Kerkman Decl. ¶ 19, Ex. 9.)

Here, there is no dispute the Jacksons did not have an erosion control plan prepared by a professional licensed Wisconsin engineer. In fact, the Jacksons admit they did not obtain an erosion control plan and did not provide Bristol with a stormwater management plan. (Witkov Decl. ¶ 4, Ex. 2: Jackson Dep. 2 at 480; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 210, 213.) Rather, the Jacksons merely consulted a friend, an Illinois engineer Gilberto Hinojosa, who not only did not create an erosion control plan, but also expressly told the Jacksons they should engage a Wisconsin licensed engineer. (Witkov Decl. ¶ 13, Ex. 11 at 2: Bristol_1585) ("you may need to engage a professional engineer licensed in Wisconsin as required by the authority having jurisdiction.").

Because the Jacksons failed to have an erosion control plan and failed to comply with Bristol's Technical Standards, the Jacksons violated Section 15-2-7, and the Court should award Bristol summary judgment.

B. The Court Should Award Bristol Summary Judgment Against The Jacksons On The Jacksons' Violation Of Section 15-2-14.

The Court should grant Bristol summary judgment on the Jacksons' violations of Section 15-2-14. Section 15-2-14 permitted Bristol to issue a Stop Work Order if (a) "Any land disturbing construction activity regulated under this Chapter is being undertaken without a permit;" (b) "The erosion and sediment control plan is not being implemented in a good faith manner;" and (c) "The conditions of the permit are not being met." (Witkov Decl. ¶ 22, Ex. 19; Kerkman Decl. ¶ 4, Ex. 2 at 14: Section 15-2-14(a)(1)-(3).) Here, the undisputed evidence shows the Jacksons violated each of these requirements.

First, the Jacksons undertook land disturbing construction activity regulated under Chapter 15 without a permit. For example, the Jacksons conducted fill activity in excess of 500 cubic yards, the Jacksons constructed Berm 2 (even though it was not authorized under the August 5, 2020 Permit), the Jacksons' installation of the driveway culvert pipe violated the August 5, 2020 Permit because the Jacksons did not install the driveway culvert pipe "per plan," and the Jacksons' construction activity resulted in water backing up on their neighbor's property to the west. (Dkt. 25 at 8-11; Witkov Decl. ¶ 12, Ex. 10: Dep. Ex. 69 at 1-2; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 28, 211-212; Kerkman Decl. ¶ 15, Ex. 8: Bristol_1715-18, 1720.) The August 5, 2020 Permit—and indeed no permit issued by Bristol—authorized the Jacksons to do these activities. As a result, the Jacksons violated Section 15-2-14.

Second, an erosion control plan could not have been implemented in a good faith manner because the Jacksons failed to implement or provide Bristol with such a plan. (Witkov Decl. ¶ 4,

Ex. 2: Jackson Dep. 2 at 480; Witkov Decl. ¶ 5, Ex. 3: Barassi-Jackson Dep. at 210, 213.) As a result, the Jacksons violated Section 15-2-14.

Third, the Jacksons repeatedly failed to meet the conditions of the August 5, 2020 Permit. The Jacksons were repeatedly told that their activities were violating the August 5, 2020 Permit as detailed in the May 5, 2022 Violation Notice and numerous emails from Bristol. (Witkov Decl. ¶ 15, Ex.13: Dep. Ex. 16 at Bristol_665; *see* Witkov Decl. ¶ 13, Ex: 11: Dep. Ex. 9 at Bristol_157.) Despite this, the Jacksons violations persisted.

Because the Jacksons undertook land disturbing construction activity regulated by Section 15 without a permit, did not implement an erosion and sediment control plan in a good faith manner, and did not meet the conditions of the August 5, 2020 Permit, the Jacksons violated Section 15-2-14, and the Court should award Bristol summary judgment.

IV. The Court Should Enter A Permanent Injunction, Remedial Order, And Forfeiture And Reasonable Attorneys' Fees And Costs To Bristol And Against The Jacksons.

For the reasons stated above, the Court should declare the Jacksons' violated the August 5, 2020 Permit, Wisconsin law, and Bristol Ordinances Sections 13-1-46 and 15-2. The Court should also grant injunctive relief, remedial relief, and a forfeiture and reasonable attorneys' fees and costs in favor of Bristol and against the Jacksons.

Specifically, the Court should: **(1)** permanently enjoin the Jacksons from any further fill or construction activity on the Property without a permit; **(2)** direct the Jacksons to restore or pay for the cost of restoring the Property to the condition it was in prior to their Bristol Ordinance violations and in full compliance with all prior permits, statutes, and ordinances, including section 13-1-46 (Filling Activities) and 15-2 (Construction Site Erosion Control); and **(3)** order the Jacksons pay to Bristol a forfeiture of between \$100 and \$500 per day since August 31, 2023 and Bristol's reasonable attorneys' fees and costs for prosecuting this lawsuit.

A. The Court Should Enter a Permanent Injunction Against the Jacksons And In Favor Of Bristol.

The Court should enter a permanent injunction restraining the Jacksons from taking any further construction or fill activities on their Property. Under Bristol Ordinance 15-2-14(d), “Compliance with the provisions of this Chapter may also be enforced by injunction in any court with jurisdiction. It shall not be necessary to prosecute for forfeiture or a cease and desist order before resorting to injunctive proceedings.” Here, a permanent injunction is required to prevent the Jacksons from taking any further construction or fill activities on the Property. As detailed above, the Jacksons repeatedly and brazenly violated the August 5, 2020 Permit, Wisconsin law, and the Bristol Ordinances. The injunction should remain in place until the Jacksons comply with a remedial order and fulfill all conditions precedent to any future permit.

B. The Court Should Enter a Remedial Order Directing the Jacksons to Restore Or Pay for the Cost of Bristol Restoring the Property to the Condition it Was In Prior to the Jacksons’ Unauthorized Fill Activity.

The Court should enter a remedial order directing the Jacksons to restore the Property to the condition it was in prior to the Jacksons’ unauthorized construction and fill activity. The Court has the authority to and should issue this relief under Wis. Stat. §§ 62.23(7)(f)2, 62.234(2), and Bristol Ordinance 15-2-14. Wis. Stat. § 62.23(7)(f)2 states, in relevant part, “[i]n case . . . land is . . . used in violation of this section or of any ordinance or other regulation made under authority conferred hereby . . . may, in addition to other remedies, institute appropriate action or proceedings . . . to restrain, correct, or abate such violation.” *Id.* Wis. Stat. § 62.234(2) states, in relevant part, “a city may enact a zoning ordinance . . . for construction site erosion control at sites described in s. 281.33(3)(a)1.a. and b. and for storm water management.” *Id.*

Pursuant to Bristol’s authority under sections 62.23 and 62.234, Bristol enacted Bristol Ordinance 15-2-14. Under Bristol Ordinance 15-2-14(d), Bristol is authorized to perform the

remedial work on the Jacksons' property to make the Property comply with Chapter 15-2.

Specifically, 15-2-14(d) states,

Notice of Village Intent to Perform Necessary Project Work. After posting a stop-work order under Subsection (a), the Director of Public Works/Village Engineer may issue a notice of intent to the responsible party of intent to perform work necessary to comply with this Chapter. The Village staff or contractors may go on the land and commence the work after issuing the notice of intent, The costs of the work performed under this Subsection by the Village of Bristol, plus interest at the rate authorized by the Village Board, shall be billed to the responsible party or recovered from the surety bond or irrevocable letter of credit. In the event a responsible party fails to pay the amount due, the Village Clerk shall enter the amount due on the tax rolls and collect it as a special assessment against the property pursuant to Subchapter VII of Chapter 66, Wis. Stats.

Here, Bristol seeks to avoid doing the work itself and respectfully requests that the Court order that the Jackson restore the Property to the condition it was in prior to the Jacksons' unauthorized fill activity. Specifically, Bristol requests that the Court order the Jacksons to take the remedial actions identified in the Strand Expert Report. These remedial measures include, at a minimum, the Jacksons providing Bristol with:

- the proposed site modifications to address and correct the issues documented in the December 20, 2024 Expert Report;
- the necessary stormwater calculations to demonstrate that ponding extents to the west match the pre-existing condition to the maximum extent practicable;
- A site grading plan;
- A HydroCAD or similar model;
- Culvert sizing calculations;
- A written narrative detailing the Jacksons' planned site modifications;
- Other information as requested by Bristol; and
- Appropriate permit applications for these site modifications compliant with all Bristol Ordinances.

(Dkt. 25 at 11, ¶ 8.)

As detailed in the Strand Expert Report, the Jacksons' required remedial actions as part of site modifications could require: (1) remove Berm 2; (2) relocate the driveway culvert; (3) add additional driveway culverts; (4) regrade the flow line downstream of the driveway culvert; (5) modify the eastern driveway and driveway culvert with that property owner's permission; (6) other strategies that the Jacksons and its engineer may generate; and (7) pursue obtaining a drainage easement on the western property that acknowledge the current ponding extents and limits grading activities and placement of structures within the easement. (Dkt. 25 at 11.)

Alternatively, the Court should order that if the Jacksons *fail to perform* the work within thirty (30) days of the Court's Order, under Bristol Ordinance Section 15-2-14(d), Bristol or its contractors may enter upon the Property and perform the work or other operations necessary to bring the Property in conformance with the August 5, 2020 Permit and Bristol Ordinances. (Kerkman Decl. ¶ 4, Ex. 2 at 16: 15-2-14(d).) Further, under Bristol Ordinance Section 15-2-14(d), "the costs of the work performed under this Subsection by the Village of Bristol, plus interest at the rate authorized by the Village Board, shall be billed to the responsible party" (*Id.*) Finally, "[i]n the event a responsible party fails to pay the amount due, the Village Clerk shall enter the amount due on the tax rolls and collect it as a special assessment against the property pursuant to Subchapter VII of Chapter 66, Wis. Stats." (*Id.*)

C. The Court Should Award Bristol Its Costs For Prosecution, Including All of Its Attorneys' Fees, Costs of Litigation, and Forfeiture.

The Court should Order the Jacksons to pay all of Bristol's reasonable attorneys' fees, costs of litigation and forfeiture, pursuant to Bristol Ordinance 15-2-14(c). Specifically, Bristol Ordinance section 15-2-14(c) states:

(c) **Forfeiture Penalty.** Any person, firm, association, or corporation violating any of the provisions of this Chapter shall be subject to a **forfeiture of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred**

Dollars (\$500.00) and the costs of prosecution for each violation. Each day that the violation exists shall constitute a separate offense. Such forfeiture(s) may be in addition to other penalties under this Chapter.

(Kerkman Decl. ¶ 4, Ex. 2 at 16: 15-2-14(e) (emphasis added).)

For the reasons stated above, the Court should find the Jacksons violated Bristol Ordinance Section 15-2-14(c) and award Bristol a forfeiture against the Jacksons of not less than \$100 and no more than \$500 per day per violation is warranted. Bristol respectfully requests the Court award the maximum of \$500 for each violation per day since August 31, 2023.

Furthermore, under Bristol Ordinance Section 15-2-14(c), Bristol requests that the Court award the cost of prosecution for each violation. Upon an award of Bristol's costs of prosecution for each violation Bristol will submit its costs to permit the Court to award the reasonable attorneys' fees and costs that the Jackson must pay Bristol.

CONCLUSION

For the reasons stated above, the Court should grant Bristol's motion for summary judgment on its complaints.

Dated : July 2, 2025.

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By: Electronically signed by Adam E. Witkov

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