

ENROLLED ORDINANCE 163-100

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF SUMMIT AND THE TOWN OF SUMMIT ZONING ORDINANCE BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NE ¼ OF SECTION 22, T7N, R17E, TOWN OF SUMMIT, WAUKESHA COUNTY, WISCONSIN, FROM THE R-3 RESIDENTIAL AND C-1 CONSERVANCY DISTRICTS (COUNTY) AND THE MF-2 MULTI-FAMILY RESIDENTIAL DISTRICT WITH A PLANNED DEVELOPMENT OVERLAY DISTRICT (TOWN) TO THE B-2 LOCAL BUSINESS DISTRICT WITH OTHER LANDS TO REMAIN ZONED C-1 CONSERVANCY DISTRICT (COUNTY) AND THE NC NEIGHBORHOOD COMMERCIAL DISTRICT WITH A PLANNED DEVELOPMENT OVERLAY DISTRICT (TOWN) (SZT-1586C)

WHEREAS the subject matter of this Ordinance having been duly referred to and considered by the Waukesha County Park and Planning Commission, after Public Hearing, and the giving of requisite notice of said hearing and the recommendation thereon reported to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, Waukesha County, Wisconsin, as required by Sections 59.692 and 60.61 of the Wisconsin State Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that the Waukesha County Shoreland and Floodland Protection Ordinance District Zoning Map for the Town of Summit, Waukesha County, Wisconsin, adopted on June 23, 1970, and the Town of Summit Zoning Ordinance adopted on August 12, 2003, are hereby amended to conditionally rezone certain lands located in part of the NE ¼ of Section 22, T7N, R17E, Town of Summit, from the R-3 Residential and C-1 Conservancy Districts (County) and the MF-2 Multi-Family Residential District with a Planned Development Overlay District (Town) to the B-2 Local Business District with other lands to remain zoned C-1 Conservancy District (County) and the NC Neighborhood Commercial District with a Planned Development Overlay District (Town), and more specifically described in the “Staff Report and Recommendation” and map on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference (SZT-1586C) subject to the following conditions:

1. There shall be no re-division of any of the original lots/outlots in the Subject Lands after approval of the division set forth in Exhibit B. A note must be placed on the Certified Survey Map(s) in a form satisfactory to the Town Attorney stating that there can be no re-division of any of the original lots/outlot(s) in the development.
2. There shall be no direct access to Upper Genesee Lake from this development. Any future proposal for lake access shall require a new public hearing and approval by the Plan Commission and Town Board.
3. The Subject Lands shall be subject to the provisions of Waukesha County’s Shore Land Ordinance and the density limitations set forth within this Ordinance.
4. All lands identified on Exhibit B as Commercial/Retail shall be subject to the provisions of Section 235-38 of the Town of Summit Zoning Code, as amended from time-to-time, unless further restricted or otherwise specifically regulated by this Ordinance.
5. The Commercial/Retail area of the Subject Lands identified on Exhibit B shall consist of office type uses and may include a day care center if approved as a conditional use.

6. Bulk Regulations set forth in Section 235-38 Neighborhood Commercial District (NC) in the Town of Summit Zoning Code, as amended from time-to-time, shall apply to the Subject Lands identified on Exhibit B except as follows:
  - a. Minimum Lot Area shall equal 30,000 sq. ft.
  - b. Minimum Lot Width shall equal 100 ft.
  - c. Minimum front/street yard setback:
    1. Six feet (6') from any local/private road;
    2. Thirteen feet (13') from any arterial street/public road.
    3. Minimum pavement setback shall equal zero feet (0').
7. Requirements for parking set forth in Section 235-45 of the Zoning Code are amended as follows:
  - a. Notwithstanding the provisions of Section 235-45(A)(1) of the Town of Summit Code, the size of each parking space shall be not less than 9' x 18' (192 square feet) exclusive of the space required for ingress and egress.
  - b. Notwithstanding the provisions of Section 235-45(C), there shall be a minimum of four (4) spaces for each 1,000 square feet of floor area.
8. Development of the Subject Lands, including but not limited to the Road Plan and lot layout, shall be in substantial conformity with the General Development Plan submitted to the Plan Commission at their meeting on December 18, 2008.
9. All Precise Implementation Plans shall be submitted within twenty-four months of the date of this Ordinance, unless extended in writing by the Town Board. Said Precise Implementation Plans shall be subject to Plan Commission and Town Board approval and shall contain all of the information required in Section 235-44(F) of the Zoning Code as follows:
  - a. An accurate identification of the area of the precise implementation plan as it relates to the General Development Plan (Section 235-44(F)(1));
  - b. The specific designation of proposed land use including the pattern of public and private roads, driveways, walkways and parking facilities; detailed lot layout and the arrangement of building groups; and the specific treatment of any "preserved lands" to be kept as common open space or amenities (Section 235-44(F)(2));
  - c. Specific landscape plans for all common open space, amenities, or housing groups (Section 235-44(F)(3));
  - d. Detailed storm drainage, sanitary sewage disposal and water system plans (Section 235-44(F)(4));
  - e. Proposed engineering standards for all roads, parking areas and walkways (Section 235-44(F)(5); and

- f. Agreements, bylaws, covenants and other documents providing for permanent preservation and maintenance of any common open areas and amenities (Section 235-44(F)(6)).
10. No specific use or building permit shall be issued for any part of the approved General Development Plan except for an area covered by an approved Precise Implementation Plan and in conformity with such plan.
11. A Precise Implementation Plan may be submitted for any portion of the approved General Development Plan provided such portion is in basic conformity with approved General Plan and represents a reasonable and appropriate stage of implementation of such plan.
12. Requests for approval of Precise Implementation Plan(s) for subsequent Development phases shall be submitted to the Plan Commission for approval. No public hearing shall be required unless deemed desirable by the Plan Commission or required as part of a Conditional Use Permit consideration.
13. Building plans shall be submitted to the Plan Commission for its review and approval prior to the issuance of any building permits for the Subject Lands.
14. Detailed building and landscape plans, as well as all other commitments, contractual agreements with the Town, plans, and specifications related to a Precise Implementation Plan shall be made a part of the official record and shall be considered supplementary to the underlying District Regulations and this Ordinance.
15. Prior to the approval of any Precise Implementation Plan by the Town Plan Commission, Deed Restrictions shall be placed on the Subject Lands in a form approved by the Plan Commission and Town Board, the Town Planner, and the Town Attorney.
16. All Deed Restrictions and owners' association documents for the developments of the Subject Lands shall be submitted to the Plan Commission and Town Board, Town Planner, and Town Attorney for the Town of Summit for approval. Further, all such Deed Restrictions and owners' association documents shall be in conformity with all Planned Development conditions and Final Development Plan conditions. If there is a conflict between any of the aforementioned provisions and/or conditions, the more restrictive shall apply. Amendments to the Deed Restrictions, owners' association documents, Planned Development conditions, and the final Development Plan conditions, must be filed with, and shall be subject to the approval of, the Plan Commission, Town Attorney, and the Staff of the Waukesha County Department of Parks and Land Use. When the Plan commission finds such an amendment to be substantial, the Plan Commission shall refer the matter to the Town Board and, in such event, such amendment shall be subject to the Town Board's additional approval.
17. Prior to the approval of any Precise Implementation Plan by the Town Plan Commission, submittal to and approval by the Waukesha County Land Resources Division and Town Engineer of an Erosion Control and Storm Water Management Plan, and approval by the Town Engineer and Town Attorney of a Storm Water Management and Maintenance Plan. All engineering plans, grading, drainage, utility relocation, paving, and landscaping and other materials and/or labor required to complete the work is the responsibility of the Developer. In the review of the Storm Water and Erosion Control

Plans, special precautions shall be taken to prevent any adverse impact on adjacent properties as it relates to drainage.

18. Prior to the approval of any Precise Implementation Plan by the Town Plan Commission, Petitioner shall submit a signage plan to the Plan Commission and Town Engineer for their approval.
19. The owners' associations created by the protective covenants for the Subject Lands shall have the responsibility for properly maintaining any signage identifying common areas for the development and maintaining any entrance areas, and any common areas of the developments. The requirements of Section 235-44(I) of the Town of Summit Zoning Code must be satisfied. In the event the associations do not properly maintain any signage, entryway, or common area(s), the Town of Summit may, but is not required to, do so and charge its costs and expenses to the applicable owners' associations and/or lot owners. Failure to pay said costs and expenses shall result in a special charge being placed on the tax roll against the lot owners pursuant to Wis. Stat. 66.0627.
20. All roads must be constructed to Town standards, unless the Town Board grants an exception(s). Petitioner shall submit a road construction plan to the Town Engineer and Plan Commission for recommendation and Town Board approval. Said plan shall clearly delineate any, and all, requested deviations from Town of Summit standard road requirements.
21. Any amendment to any of the aforementioned plans must be submitted to, and approved by the individuals, body, and/or bodies that originally approved said plan(s), unless otherwise designated in this Ordinance.
22. The Petitioner must pay all fees, costs, and assessments due and owing to the Town of Summit and all costs and expenses incurred by the Town of Summit, including legal and engineering fees and costs, by any aspect of the Petition and subsequent development of the Subject Lands as provided under Section 125-1 of the Town of Summit Code of Ordinances.
23. Developer(s) of the Subject Lands shall delineate to the satisfaction of the Plan Commission any utility company that will provide service to the Subject Lands.
24. Petitioner must submit to the Plan Commission a written acknowledgement stating that the Subject Lands are subject to conditions of approval, including the condition that the owner(s) of the Subject Lands sign a Developer's Agreement with the Town of Summit and record required deed restrictions, and if any owner(s) do not do so, the development of the Subject Lands cannot proceed. Petitioner waives any claim(s) that it may have against the Town of Summit, including, but not limited to, claims for damages, costs, and expenses, and claims of vested rights to the proposed development of the Subject Lands, in the event any owner(s) of the Subject Lands do not agree to the required terms.
25. Development of the Subject Lands with respect to commercial architectural design, materials, and layout must be in substantial conformity with the development plan submitted and any representations made by the Petitioner at Plan Commission hearings, which were commenced on August 9, 2006.
26. Petitioner shall, in all respects, satisfy all terms and conditions of the Town of Summit Zoning Code, including but not limited to all terms and conditions of the planned

development sections of the same, and the Town of Summit ordinance regulating the division and platting of land except as may otherwise expressly modified by this Ordinance.

27. Petitioner shall satisfy all comments and concerns of the Town Engineer, including whether or not all conditions of the ordinance regarding a general implementation plan have been satisfied.
28. Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In the case of a question as to the classification of use, the question shall be submitted to the Plan Commission for determination.
29. No use is hereby authorized unless that use is conducted in a lawful, orderly, and peaceful manner. Nothing in this Ordinance shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption, or exception to any law, ordinance, order, or rule of either the Town of Summit, the County of Waukesha, the State of Wisconsin, the United States of America, or other duly constituted authority except only to the extent that it authorizes a nonconforming use of the Subject Lands in specific respects expressly described herein. This Ordinance shall not be deemed to constitute a building permit, nor shall this Ordinance constitute any other license or permit required by Town Ordinance or other law or regulation.
30. Any violation of this Ordinance shall constitute a violation of the Zoning Ordinance for the Town of Summit and shall be subject to the enforcement procedures contained in Section 235-84 of the Town of Summit Zoning Code, as amended from time-to-time.
31. The site layout must remain in substantial compliance with the Development Plan dated November, 2008 and date stamped November 21, 2008 and referenced as Exhibit "C."
32. A Conditional Use Permit for an amendment to the Mixed Planned Unit Development must be obtained from Waukesha County.

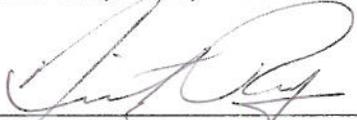
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Summit.

BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

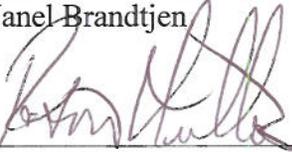
BE IT FURTHER ORDAINED that all ordinances inconsistent with or in contravention of provisions of this Ordinance are hereby repealed.

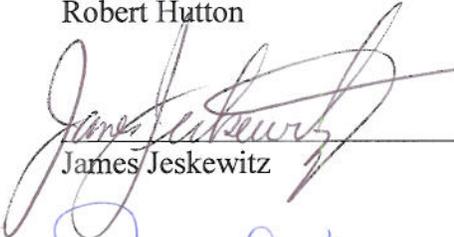
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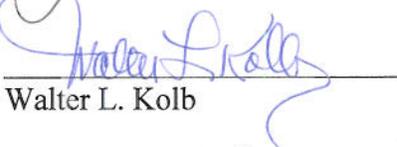
Presented by:  
Land Use, Parks, and Environment Committee

  
Fritz Ruf, Chair

N/A (Absent)  
Janel Brandtjen

  
Robert Hutton

  
James Jeskewitz

  
Walter L. Kolb

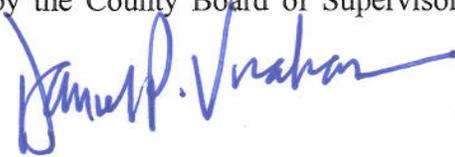
N/A (Absent)  
Ted Rolfs

(Absent)  
Gilbert W. Yerke

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 3/27/09,   
Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X  
Vetoed: \_\_\_\_\_  
Date: 3-27-09,   
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE  
STAFF REPORT AND RECOMMENDATION  
ZONING MAP AMENDMENT

FILE NO: SZT-1586C  
TAX KEY NUMBER: SUMT 0661.983  
DATE: February 19, 2009

NAME OF PETITIONER  
AND OWNER:

Jerry Erdmann  
TKLW, LLC  
1833 Executive Dr., Suite 101  
Oconomowoc, WI 53066

LOCATION OF PROPERTY:

Part of the NE ¼ of Section 22, T7N, R17E, Town of Summit. More specifically the property is located at the southeast intersection of S.T.H. 67 and C.T.H. "DR". The subject lands consist of approximately 4.2 acres.

PRESENT ZONING:

R-3 Residential District and C-1 Conservancy District (County Shoreland Zoning) and MF-2 Multi-Family Residential District with a Planned Development Overlay District (Town Zoning).

PRESENT LAND USE:

Vacant lands that are part of a larger mixed use development consisting of a skilled nursing and assisted living facility under construction and planned commercial and office uses.

PROPOSED ZONING:

B-2 Local Business District with other lands to remain zoned C-1 Conservancy District (County Shoreland Zoning). NC Neighborhood Commercial District with a Planned Development Overlay District (Town).

PROPOSED LAND USE:

Office uses, which may include a daycare center, in two (2) proposed buildings.

PUBLIC HEARING DATE:

December 18, 2008.

PUBLIC REACTION:

One (1) neighbor spoke regarding the proposal. She expressed no specific support nor opposition for the project and asked a question about parking requirements.

TOWN OF SUMMIT PLAN COMMISSION ACTION:

On December 18, 2008, the Town of Summit Plan Commission recommended approval of the rezoning and the associated Conditional Use amendment request (SCU-1413C) and directed the Town Planner to draft conditions of approval for the Town Board.

**TOWN OF SUMMIT BOARD ACTION:**

On February 5, 2009, the Town of Summit Board conditionally approved the rezoning request, subject to numerous conditions contained in Town Ordinance No. 286-09 (See Exhibit "A"), to amend the Town's Planned Development Overlay District Overlay (PDO) to rezone approximately 4.2 acres from MF-2 Multi-Family Residential District to the NC Neighborhood Commercial District. The Town Board also recommended approval of the County rezone petition subject to three conditions, which are outlined in the attached February 11, 2009 memorandum from Henry Elling, Town Planner, and attached as Exhibit "B." The Board also recommended approval of the concurrent Conditional Use application for amendments to the Mixed Planned Unit Development, with several recommendations offered in the February 11, 2009 memo.

**COMPLIANCE WITH THE WAUKESHA COUNTY DEVELOPMENT PLAN:**

At the request of the Town of Summit, the 4.2 acres was the subject of a 2008 Development Plan Amendment that placed the property in the Commercial category to match the Commercial category that was applied to the other C.T.H. "DR" and S.T.H. 67 frontage lands. A 2007 Plan Amendment authorized mixed land uses on the site to include residential, retail, office and institutional uses. The area to the north of Upper Genesee Lake is designated as Primary Environmental Corridor (PEC). The proposed 2009 Development Plan shows the entire property in the new Mixed Use category, with the exception of the PEC. The proposal is consistent with both the adopted and proposed County Development Plans.

**OTHER CONSIDERATIONS:**

The Waukesha County Board approved Zoning Amendments (SZT-1586A, SZT 1586B) for the subject lands on February 27, 2007 and February 26, 2008. The Waukesha County Park and Planning Commission approved Conditional Use requests (SCU-1413A, SCU1413B) for the property on January 11, 2007 and January 24, 2008. The 2008 approvals allowed for the incorporation of an Extendicare senior campus into the larger mixed use development that was authorized as a Planned Unit Development in 2007. At the November 15, 2007 public hearing for the project, several of the residential neighbors along Silver Maple Lane expressed a preference for commercial/office development for the 4.2 acres just north of the residences along Silver Maple Lane rather than the 16 residential condominium units that were proposed within eight (8) buildings. The Town Plan Commission expressed a similar sentiment. In response to these comments after the close of the public hearing, the developer submitted an alternative concept plan for this acreage, but because the public notice and hearing considered the original condominium plan, the Park and Planning Commission required that the petitioner instead obtain further approval for a subsequent rezoning and Conditional Use amendment to make such a change.

The petitioner has now brought forward a more detailed proposal for the 4.2 acre portion of the site, which is identified as Lot 6 on Exhibit "C". Specifically, the concept plan identifies two (2) potential buildings oriented to C.T.H. "DR" but accessed via the newly extended Silver Maple Lane. The petitioner is seeking an increase in the permissible overall commercial and office square footage for the development to 184,000 square feet, which is an additional 32,373 square feet over what was previously approved. The submitted plans presented show two (2) buildings totaling 30,160 square feet in proposed area. Consequently, the Town forwarded a recommendation that the total square footage not exceed 182,000 square feet, rather than the 184,000 that was proposed. It should be noted the additional proposed square footage for the office buildings is likely fairly comparable to the square footage of the previously planned 16 condominium units. In addition, the condominium plan had called for a boardwalk and piers for non-

motorized watercraft extending into Upper Genesee Lake. The current proposal no longer includes any proposed piers or lake access points. The westerly one-story building is planned for use as a potential daycare facility, while the two-story building is planned for general office space.

The site plan depicts 144 parking spaces, with area for an additional 13 spaces, if necessary, which is just under five (5) stalls per 1,000 square feet of floor area. The prior Conditional Use approval had called for a minimum of five (5) parking spaces per 1,000 square feet of floor area within the commercial portions of the development, but strictly office type and daycare uses are proposed for this area, whereas the balance of the development will contain a mix of retail and office uses. The Shoreland Ordinance only requires one parking space per every 300 feet of office space. In addition, Staff suggested at the public hearing that the developer might consider reducing the area of parking to reduce the overall impervious surface area for the project. There was discussion at the hearing that medical office uses tend to demand higher amounts of parking than conventional office space, but thus far, specific users of the office space have not been identified. Consequently, the Town is requiring that a ratio of at least four (4) spaces per one thousand feet of floor area be provided for this portion of the development. The parking areas are depicted as being a minimum of 75' from the wetlands to the north and west of Upper Genesee Lake. Staff feels that, given the large area of pavement relatively near the wetlands and the lake, that a 35' wetland buffer would be an appropriate measure to require to assist in removing particulate and preventing erosion in the area between the parking lot and the wetlands. Because the large parking lots will abut a residential lot to the south, Staff also feels that a landscape buffer along the south property boundary would help to reduce the view of the parking lot and associated lighting. The Town has also recommended that parking areas maintain a 20' setback from the south property boundary of Lot 6, which Staff feels is appropriate. As was discussed at the public hearing, an existing tree line provides a good amount of screening for the neighboring property to the south, but some enhancement of the tree line would help to buffer the parking area further.

The petitioner is also seeking a change to the terms of the approved Conditional Use relative to parking yard setbacks for the entire Planned Unit Development. The previously approved parking setback was 10' from the public or private right-of-way line, and the petitioner is now seeking approval for a reduction of that setback to 5'. The petitioner has presented plans showing that the closest point of any parking space to the actual paved road is approximately 23'. Consequently, Staff feels that this change will not adversely affect the development's aesthetics, as there will still be ample space for landscaping between parking areas and roadways.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that this request be approved, subject to the following conditions:

1. All conditions of the Town of Summit Board shall be incorporated as an integral part of this Conditional Rezoning (See Exhibit "A").
2. The site layout must remain in substantial compliance with the Development Plan dated November, 2008 and date stamped November 21, 2008 and referenced as Exhibit "C."
3. A Conditional Use Permit for an amendment to the Mixed Planned Unit Development must be obtained from Waukesha County.

As conditioned, the proposed amendment is in compliance with the Waukesha County Development Plan. The change to the project to include additional office space is consistent with the uses that have been previously authorized for the Mixed Planned Unit Development. The recommended conditions for the associated Conditional Use require a wetland buffer and landscape screening to ensure that both the natural environment and residential neighbors are protected from any potential adverse impacts.

Respectfully submitted,

*Jason Fruth / Kab*

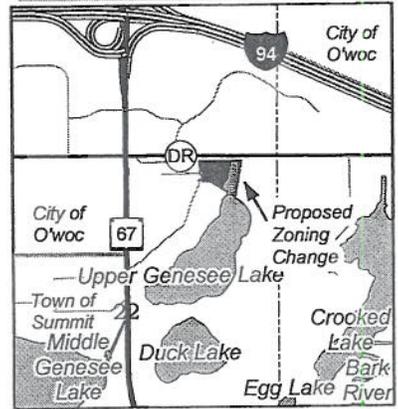
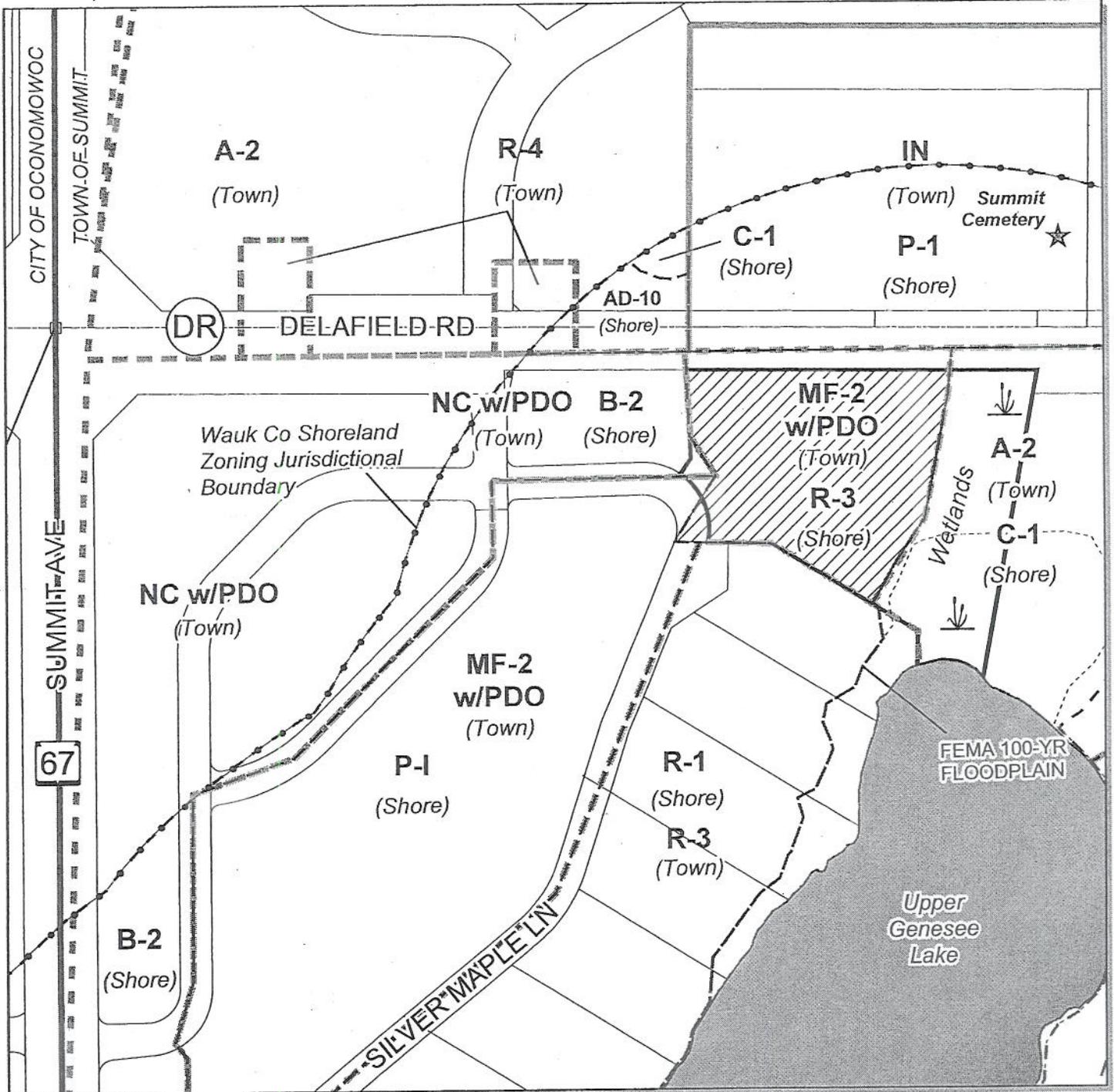
Jason Fruth  
Senior Planner

Attachments: Exhibits "A", "B", "C" and Map

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# ZONING MAP AMENDMENT

PART OF THE NE 1/4 OF SECTION 22  
TOWN OF SUMMIT



**CONDITIONAL SHORELAND ZONING CHANGE FROM R-3 RESIDENTIAL TO B-2 LOCAL BUSINESS DISTRICT AND TOWN ZONING CHANGE FROM MF-2 MULTI-FAMILY W/ PLANNED DEVELOPMENT OVERLAY DISTRICT (PDO) TO NC NEIGHBORHOOD COMMERCIAL DISTRICT W/ PDO (REMAINDER OF PARCEL IN WETLANDS UNCHANGED)**

FILE.....SZT-1586C  
 DATE.....02-19-09  
 AREA OF CHANGE.....4.2 ACRES  
 TAX KEY NUMBER.....SUMT 0661.983

N

1 inch = 300 feet

0 75 150 300 Feet

Prepared by the Waukesha County  
Department of Parks and Land Use

163-0-101

STATE OF WISCONSIN

TOWN OF SUMMIT

WAUKESHA COUNTY

ORDINANCE NO. 286-09

AN ORDINANCE TO  
CONDITIONALLY REZONE CERTAIN LANDS  
IN THE TOWN OF SUMMIT TO  
THE NEIGHBORHOOD COMMERCIAL DISTRICT (NC)  
WITH A PLANNED DEVELOPMENT OVERLAY DISTRICT (PDO)

WHEREAS, a petition has been filed on November 20, 2008, by TKLW, LLC, a domestic limited liability company ("Petitioner"), as the owner of certain lands in the Town of Summit, to rezone certain lands described herein and incorporated by reference as Exhibit A (the "Subject Lands"); and

WHEREAS, said rezoning petition was submitted in order to rezone the Subject Lands from the MF-2 Multi-Family District (MF-2) District to the Neighborhood Commercial District (NC), with a Planned Development Overlay District (PDO), which shall overlay the afore-stated commercial district; and

WHEREAS, the Petitioner has supplied all required data pursuant to the Town of Summit Zoning Code, and

WHEREAS, Petitioner has provided a General Development Plan pursuant to Section 235-44(D)(2) of the Town of Summit Zoning Code providing a general concept plan for the entire area covered by the Planned Development Overlay District (PDO) in sufficient detail to permit the evaluation of the approval criteria set forth in Section 235-44(B) of the Town of Summit Zoning Code; and

WHEREAS, the General Development Plan (a copy of which is attached hereto and incorporated by reference as Exhibit B) sets forth all of the following information required under Section 235-44(D)(2) of the Town of Summit Zoning Code:

- The pattern of proposed land use, including general size, shape and arrangement of lots and specific use areas, proposed density of residential development; proposed building square footage for commercial or industrial development; general environmental character of common open spaces, parking and drive areas, recreation facilities, principal landscaping features, floodplain and/or wetlands and other major components of the proposed project;
- The basic street pattern with a description of public dedication and private ownership on the roadways;
- The basic storm drainage pattern;

- The general location, size, and character of recreational and open space areas;
- Documents or related information or plans showing the architectural designs of buildings;
- Appropriate statistical data relative to the development;
- General outline of intended organizational structure related to property owner's association, deed restrictions, etc.; and
- Any other information deemed appropriate and necessary by the Town of Summit Plan Commission ("Plan Commission"); and

WHEREAS, the General Development Plan provided by Petitioner has been available for public inspection in the office of the Town Clerk since November 20, 2008; and

WHEREAS, a Precise Implementation Plan in conformity with the requirements set forth in Section 235-44(E)(2) of the Town of Summit Zoning Code must be submitted by the Petitioner for that portion of the Subject Lands for which specific development approval is requested concurrent with the General Development Plan approval; and

WHEREAS, the Subject Lands is located within the Waukesha County 1,000' shore land zoning jurisdictional area; and

WHEREAS, upon referral of the petition by the Town Clerk, the Plan Commission scheduled a public hearing for the Plan Commission and a representative of Waukesha County; and

WHEREAS, notice having been given as required under Section 235-81 of the Zoning Code of the Town of Summit, the Plan Commission and a representative of Waukesha County's Department of Parks and Land Use held a public hearing on December 18, 2008 at 6:30 p.m. as required by said Section 235-81; and

WHEREAS, the Plan Commission has recommended to the Town Board of Supervisors for the Town of Summit ("Town Board") that the requested zoning be made and that the General Development Plan be approved upon satisfaction of certain conditions; and

WHEREAS, the Plan Commission in making its recommendation, and the Town Board, having carefully reviewed the recommendation of the Plan Commission in making its determination as to the approval of the zoning requested, have given consideration to the approval requirements in Section 235-44(B) of the Town of Summit Zoning Code set forth below and are satisfied as to the following:

- (A) That the proposed development is consistent with the spirit and intent of the Town of Summit Zoning Code and with the Development Goals set forth in Section 265-15C of the Zoning Code and has been prepared with competent professional advice and guidance and produces significant benefits in terms of improved environmental design and in contributing to the aforesaid Development Goals to justify the application of the Planned Development concept;
- (B) That the site development plan reflects sensitive consideration of the physical nature of the site with particular concern for conservation of natural features, preservation of open space and careful shaping of terrain to minimize scarring, insure proper drainage and preservation of natural terrain wherever appropriate;
- (C) That the general character and intensity of use of the development produces an attractive environment appropriate to the uses proposed and which is compatible with existing development in the surrounding area and with general community development plans and policies;
- (D) That the development can be provided with appropriate municipal services and would not conflict with or cause overload on such facilities as schools, highway, police, fire, or utility services;
- (E) That proposed design standards provide adequately for practical functioning and maintenance based on actual functional need in terms of circulation, parking, emergency services, delivery services, and snow plowing;

WHEREAS, having determined that all procedural and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the granting of such rezoning on the health, safety, and welfare of the community and the immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved as well as the impact on the community as to noise, dust, smoke, odor, and others, hereby determines that the rezoning will not violate the spirit or intent of the Zoning Code for the Town of Summit, will not be contrary to the public health, safety, or general welfare of the Town of Summit, will not be hazardous, harmful, noxious, offensive, or a nuisance by reason of noise, dust, smoke, odor, or other similar factors and will not, for any other reason, cause a substantial adverse effect on the property values and general desirability of the neighborhood as long as the operation is conducted pursuant to the following conditions and in strict compliance with the same and is consistent with the recommendations found in the Town of Summit master plan;

NOW, THEREFORE, the Town Board of the Town of Summit, Waukesha County Wisconsin, DO ORDAIN AS FOLLOWS:

SECTION 1: Commencing upon the date hereof, the Zoning Map of the Town of Summit is hereby conditionally amended to rezone and add overlay districts on the Subject Lands, specifically to rezone the Subject Lands to the Neighborhood Commercial District (NC) with a Planned Development District overlay, all as set forth on the attached Exhibit B and subject to the conditions stated in Section 2 of this Ordinance being fully met.

SECTION 2: CONDITIONS IMPOSED.

The rezoning of the Subject Lands and the General Development Plan for the construction of a Planned Development for residential and commercial development, continuation of the public road system, is hereby granted subject to compliance with all of the following conditions:

1. There shall be no re-division of any of the original lots/outlots in the Subject Lands after approval of the division set forth in Exhibit B. A note must be placed on the Certified Survey Map(s) in a form satisfactory to the Town Attorney stating that there can be no re-division of any of the original lots/outlot(s) in the development.
2. There shall be no direct access to Upper Genesee Lake from this development. Any future proposal for lake access shall require a new public hearing and approval by the Plan Commission and Town Board.
3. The Subject Lands shall be subject to the provisions of Waukesha County's Shore Land Ordinance and the density limitations set forth within this Ordinance.
4. All lands identified on Exhibit B as Commercial/Retail shall be subject to the provisions of Section 235-38 of the Town of Summit Zoning Code, as amended from time-to-time, unless further restricted or otherwise specifically regulated by this Ordinance.
5. The Commercial/Retail area of the Subject Lands identified on Exhibit B shall consist of office type uses and may include a day care center if approved as a conditional use.
6. Bulk Regulations set forth in Section 235-38 Neighborhood Commercial District (NC) in the Town of Summit Zoning Code, as amended from time-to-time, shall apply to the Subject Lands identified on Exhibit B except as follows:

- i. Minimum Lot Area shall equal 30,000 sq. ft.
  - ii. Minimum Lot Width shall equal 100 ft.
  - iii. Minimum front/street yard setback:
    - 1. Six feet (6') from any local/private road;
    - 2. Thirteen feet (13') from any arterial street/public road.
    - 3. Minimum pavement setback shall equal zero feet (0').
7. Requirements for parking set forth in Section 235-45 of the Zoning Code are amended as follows:
- Notwithstanding the provisions of Section 235-45(A)(1) of the Town of Summit Code, the size of each parking space shall be not less than 9' x 18' (192 square feet) exclusive of the space required for ingress and egress.
  - Notwithstanding the provisions of Section 235-45(C), there shall be a minimum of four (4) spaces for each 1,000 square feet of floor area.
8. Development of the Subject Lands, including but not limited to the Road Plan and lot layout, shall be in substantial conformity with the General Development Plan submitted to the Plan Commission at their meeting on December 18, 2008.
9. All Precise Implementation Plans shall be submitted within twenty-four months of the date of this Ordinance, unless extended in writing by the Town Board. Said Precise Implementation Plans shall be subject to Plan Commission and Town Board approval and shall contain all of the information required in Section 235-44(F) of the Zoning Code as follows:
- a. An accurate identification of the area of the precise implementation plan as it relates to the General Development Plan (Section 235-44(F)(1));
  - b. The specific designation of proposed land use including the pattern of public and private roads, driveways, walkways and parking facilities; detailed lot layout and the arrangement of building groups; and the specific treatment of any "preserved lands" to be kept as common open space or amenities (Section 235-44(F)(2));
  - c. Specific landscape plans for all common open space, amenities, or housing groups (Section 235-44(F)(3));
  - d. Detailed storm drainage, sanitary sewage disposal and water system plans (Section 235-44(F)(4));

- e. Proposed engineering standards for all roads, parking areas and walkways (Section 235-44(F)(5); and
  - f. Agreements, bylaws, covenants and other documents providing for permanent preservation and maintenance of any common open areas and amenities (Section 235-44(F)(6).
10. No specific use or building permit shall be issued for any part of the approved General Development Plan except for an area covered by an approved Precise Implementation Plan and in conformity with such plan.
  11. A Precise Implementation Plan may be submitted for any portion of the approved General Development Plan provided such portion is in basic conformity with approved General Plan and represents a reasonable and appropriate stage of implementation of such plan.
  12. Requests for approval of Precise Implementation Plan(s) for subsequent Development phases shall be submitted to the Plan Commission for approval. No public hearing shall be required unless deemed desirable by the Plan Commission or required as part of a Conditional Use Permit consideration.
  13. Building plans shall be submitted to the Plan Commission for its review and approval prior to the issuance of any building permits for the Subject Lands.
  14. Detailed building and landscape plans, as well as all other commitments, contractual agreements with the Town, plans, and specifications related to a Precise Implementation Plan shall be made a part of the official record and shall be considered supplementary to the underlying District Regulations and this Ordinance.
  15. Prior to the approval of any Precise Implementation Plan by the Town Plan Commission, Deed Restrictions shall be placed on the Subject Lands in a form approved by the Plan Commission and Town Board, the Town Planner, and the Town Attorney.
  16. All Deed Restrictions and owners' association documents for the developments of the Subject Lands shall be submitted to the Plan Commission and Town Board, Town Planner, and Town Attorney for the Town of Summit for approval. Further, all such Deed Restrictions and owners' association documents shall be in conformity with all Planned Development conditions and Final Development Plan conditions. If there is a conflict between any of the aforementioned provisions and/or conditions, the more restrictive shall apply. Amendments to the Deed Restrictions, owners' association documents, Planned Development

conditions, and the final Development Plan conditions, must be filed with, and shall be subject to the approval of, the Plan Commission, Town Attorney, and the Staff of the Waukesha County Department of Parks and Land Use. When the Plan commission finds such an amendment to be substantial, the Plan Commission shall refer the matter to the Town Board and, in such event, such amendment shall be subject to the Town Board's additional approval.

17. Prior to the approval of any Precise Implementation Plan by the Town Plan Commission, submittal to and approval by the Waukesha County Land Resources Division and Town Engineer of an Erosion Control and Storm Water Management Plan, and approval by the Town Engineer and Town Attorney of a Storm Water Management and Maintenance Plan. All engineering plans, grading, drainage, utility relocation, paving, and landscaping and other materials and/or labor required to complete the work is the responsibility of the Developer. In the review of the Storm Water and Erosion Control Plans, special precautions shall be taken to prevent any adverse impact on adjacent properties as it relates to drainage.
18. Prior to the approval of any Precise Implementation Plan by the Town Plan Commission, Petitioner shall submit a signage plan to the Plan Commission and Town Engineer for their approval.
19. The owners' associations created by the protective covenants for the Subject Lands shall have the responsibility for properly maintaining any signage identifying common areas for the development and maintaining any entrance areas, and any common areas of the developments. The requirements of Section 235-44(l) of the Town of Summit Zoning Code must be satisfied. In the event the associations do not properly maintain any signage, entryway, or common area(s), the Town of Summit may, but is not required to, do so and charge its costs and expenses to the applicable owners' associations and/or lot owners. Failure to pay said costs and expenses shall result in a special charge being placed on the tax roll against the lot owners pursuant to Wis. Stat. 66.0627.
20. All roads must be constructed to Town standards, unless the Town Board grants an exception(s). Petitioner shall submit a road construction plan to the Town Engineer and Plan Commission for recommendation and Town Board approval. Said plan shall clearly delineate any and all requested deviations from Town of Summit standard road requirements.
21. Any amendment to any of the aforementioned plans must be submitted to, and approved by the individuals, body, and/or bodies that originally approved said plan(s), unless otherwise designated in this Ordinance.

22. The Petitioner must pay all fees, costs, and assessments due and owing to the Town of Summit and all costs and expenses incurred by the Town of Summit, including legal and engineering fees and costs, by any aspect of the Petition and subsequent development of the Subject Lands as provided under Section 125-1 of the Town of Summit Code of Ordinances.
23. Developer(s) of the Subject Lands shall delineate to the satisfaction of the Plan Commission any utility company that will provide service to the Subject Lands.
24. Petitioner must submit to the Plan Commission a written acknowledgement stating that the Subject Lands are subject to conditions of approval, including the condition that the owner(s) of the Subject Lands sign a Developer's Agreement with the Town of Summit and record required deed restrictions, and if any owner(s) do not do so, the development of the Subject Lands cannot proceed. Petitioner waives any claim(s) that it may have against the Town of Summit, including, but not limited to, claims for damages, costs, and expenses, and claims of vested rights to the proposed development of the Subject Lands, in the event any owner(s) of the Subject Lands do not agree to the required terms.
25. Development of the Subject Lands with respect to commercial architectural design, materials, and layout must be in substantial conformity with the development plan submitted and any representations made by the Petitioner at Plan Commission hearings, which were commenced on August 9, 2006.
26. Petitioner shall, in all respects, satisfy all terms and conditions of the Town of Summit Zoning Code, including but not limited to all terms and conditions of the planned development sections of the same, and the Town of Summit ordinance regulating the division and platting of land except as may otherwise expressly modified by this Ordinance.
27. Petitioner shall satisfy all comments and concerns of the Town Engineer, including whether or not all conditions of the ordinance regarding a general implementation plan have been satisfied.
28. Any use not specifically listed as permitted shall be considered to be prohibited except as may be otherwise specifically provided herein. In the case of a question as to the classification of use, the question shall be submitted to the Plan Commission for determination.
29. No use is hereby authorized unless that use is conducted in a lawful, orderly, and peaceful manner. Nothing in this Ordinance shall be deemed to authorize any public or private nuisance or to constitute a waiver, exemption, or exception to

any law, ordinance, order, or rule of either the Town of Summit, the County of Waukesha, the State of Wisconsin, the United States of America, or other duly constituted authority except only to the extent that it authorizes a nonconforming use of the Subject Lands in specific respects expressly described herein. This Ordinance shall not be deemed to constitute a building permit, nor shall this Ordinance constitute any other license or permit required by Town Ordinance or other law or regulation.

30. Any violation of this Ordinance shall constitute a violation of the Zoning Ordinance for the Town of Summit and shall be subject to the enforcement procedures contained in Section 235-84 of the Town of Summit Zoning Code, as amended from time-to-time.

### SECTION 3: SEVERABILITY.

The several sections of this Ordinance are declared to be severable. If any section or provision thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such declaration shall apply only to the specific section(s) or portion(s) thereof directly specified in said declaration, and shall not affect the validity of any other provisions, sections, or portions of the Ordinance, which shall remain in full force and effect. Any other Ordinances whose terms are in conflict with the provisions of this Ordinance are hereby repealed as to those terms that conflict.

### SECTION 4: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon its passage and posting/publication as provided by law.

This Ordinance passed this \_\_\_\_ day of \_\_\_\_\_, 2009.

TOWN OF SUMMIT

By: \_\_\_\_\_  
Leonard J. Susa, Town Chair

Attest: \_\_\_\_\_  
Debra Schueler, Town Clerk/Treasurer

Published/Posted the \_\_\_\_ day of \_\_\_\_\_ 2009.

D:\Documents And Settings\Paul E. Alexy\My Documents\Word\Summit, Town Of\Land Use\Nimrod Farm\Conditional Rezoning Ordinance 091806 Clean.Doc

## Exhibit A

### Legal Description of parcel

Being a part of Lot 6 of C.S.M. No. 10572, and part of the NW 1/4 and NE 1/4 of the NE 1/4 of Section 22, T7N, R17E, Town of Summit, Waukesha County, Wisconsin, more fully described as follows; Commencing at the North 1/4 corner of said Section 22; thence N89°05'41"E, along the North line of said NE 1/4, 217.05 feet to a point; thence S00°54'19"E, 87.00 feet to a point; thence N89°05'41"E, 1072.97 feet to the NW corner of said Lot 6 and the point of beginning of the hereinafter described lands; thence continuing along said Southerly line, N89°05'41"E, 708.80 feet to the NE corner of said Lot 6; thence S08°57'12"W, along the easterly line of said Lot 6, 300.00 feet to a meander point, said point lying N08°57'12"E, 40 feet more or less from the ordinary high water line of Upper Genesee Lake; thence S46°22'08"W, along a meander line, 309.57 feet to the terminus of said meander line, said terminus point lying N59°58'05"W, 41 feet more or less from the ordinary high water line of Upper Genesee Lake; thence N59°58'05"W, 300.00 feet to a point; thence N89°58'00"W, 198.20 feet to the Westerly right-of-way line of Silver Maple Lane; thence N28°50'11"E, 157.19 feet to a point; thence N31°33'55"W, 91.58 feet to a point on the westerly line of said Lot 6; thence N03°24'24"W; along said westerly line, 133.00 feet to the place of beginning. Also including all those lands between the above described meander line and the side lot lines as extended to the ordinary high water line of Upper Genesee Lake. Excluding therefrom all those lands currently designated as wetlands. Said lands containing 184,840 square feet (4.24 acres).



## EXHIBIT "B"

Town Hall, 567-2757  
Fax, 567-4115  
Highway Dept., 567-2422  
Police Dept., 567-1134  
Building Inspector, 646-2577

Summit Town Hall • 2911 N. Dousman Road • Oconomowoc, WI 53066

**TO:** Jason Fruth, Waukesha County

**FROM:** Summit Plan Commission  
Henry Elling, Town Manager/Planner

**DATE:** February 11, 2009

**SUBJECT:** Summit Village Commons Information

The Plan Commission for the Town of Summit and the Waukesha County Parks and Land Use Department held a public hearing on December 18, 2008 to review the proposed plans and changes for the northeast corner of the Summit Village Commons project. The group then met on January 22 to review several of these issues. From that meeting they prepared a recommendation on the County Conditional Use Permit, a recommendation on the County rezoning, and a draft Ordinance for Town Board action.

At the Town Board meeting on February 5, 2008, the Summit Town Board approved the attached Town Zoning ordinance. We request that this material be forwarded to your Plan Commission for review and recommendation.

On February 5 the Town Board also recommended approval of the County rezoning change with the three conditions listed below:

1. All conditions of the Waukesha County Park and Planning Commission Conditional Use Permit for a Commercial Mixed Use Planned Development, as amended, shall be incorporated as an integral part of this rezoning.
2. All conditions of the Town Rezoning Ordinance shall be incorporated as an integral part of the rezoning.
3. The site layout must remain in substantial compliance with the plans presented at the public hearing on December 18, 2008.

Finally, on February 5, the Town Board agreed with the Town Plan Commission on the following recommendations relative to your Conditional Use Permit.

Condition #3 identifies approval based on the plans presented several years ago. The dates in this condition, and the plan references, must be updated through the information presented at the public hearing on December 18.

Condition #4 should be deleted to allow the specific plans presented for this portion of the property. This condition was originally included to protect the Town and County to require further review of this portion of the site.

Condition #5(E)(2) should be considered for amendment to allow four parking space for each 1,000 square feet for the 4.2-acre site under discussion. All other parts of the Summit Village Commons project should remain at the 5 spaces per 1,000 square foot regulation.

Condition #8 should be amended to allow up to 182,000 square feet of space. This would then include the additional space proposed as part of the December 18 presentation.

Condition #18 should be amended to allow for a five foot (5') setback along the internal property line of the outlots where private roads are proposed. The setback along the south lot line of the 4.2-acre site should be listed at a minimum of twenty feet (20') for parking and pavement.

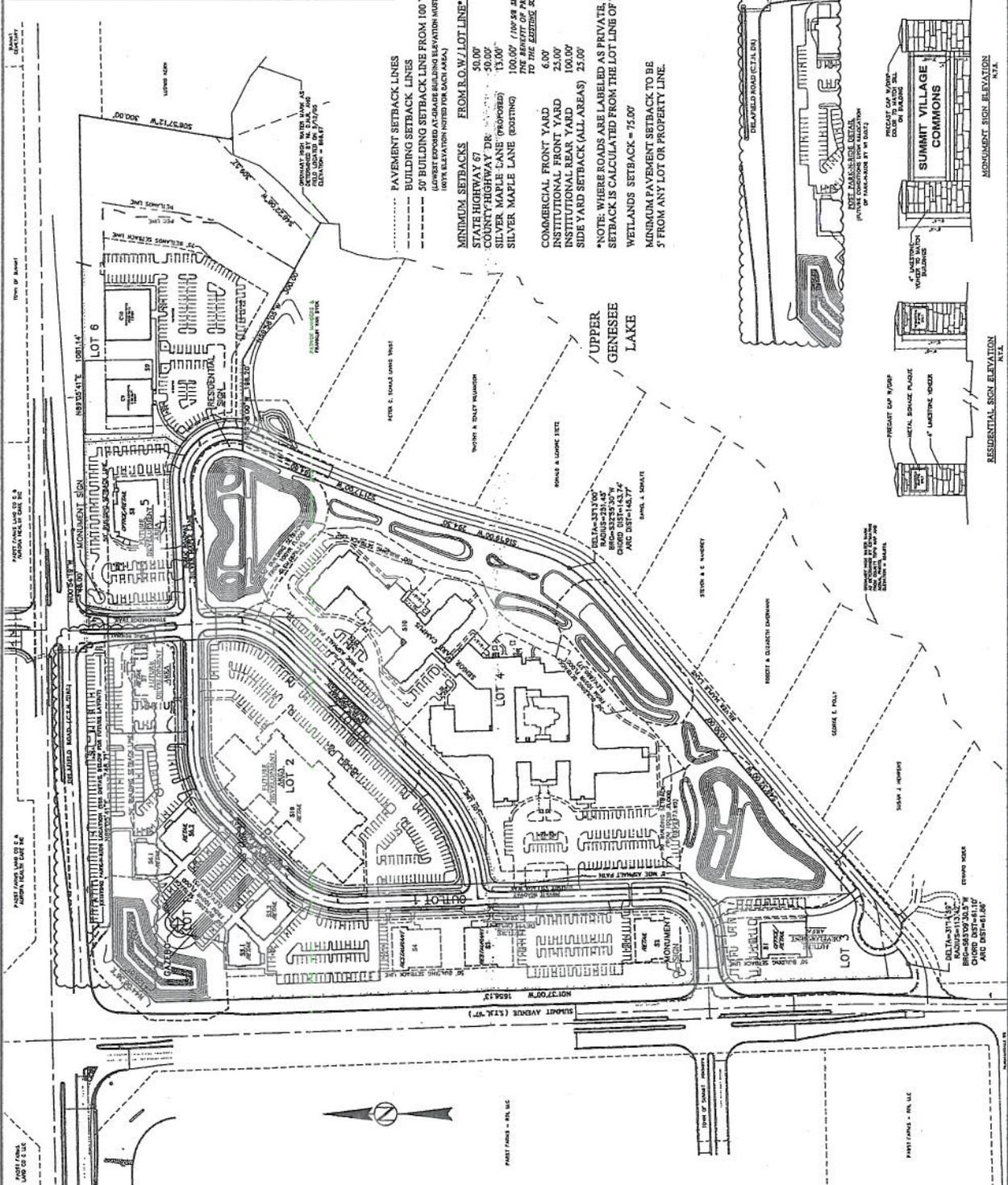
If you have any questions about this material, please let me know or call here at Town Hall.

LAKE COUNTRY ENGINEERING, INC.  
 Consulting Engineers - Surveyors  
 1257 NORTH BROWN STREET, SUITE 102, WAUKESHA, WI 53186  
 PHONE (262) 558-8291 FAX (262) 558-8218  
 GUY W. BUEHLER, P.E., L.S.  
 772 E. WISCONSIN ST., SUITE 200, WAUKESHA, WI 53186

**STATISTICS**

<b>BUILDING AREA:</b>	19,691 SQ. FT.
OFFICE	84,869 SQ. FT.
RETAIL	15,288 SQ. FT.
RESTAURANT	
<b>PARKING:</b>	99 SPACES REQUIRED
RETAIL	120 SPACES PROVIDED
RESTAURANT	425 SPACES PROVIDED
	92 SPACES PROVIDED
	92 SPACES PROVIDED
<b>LANDSCAPE ISLANDS/MEDIANS:</b>	
OFFICE	2,106 SQ. FT. PROVIDED
RETAIL	4,209 SQ. FT. PROVIDED
RESTAURANT	7,652 SQ. FT. PROVIDED
	20,812 SQ. FT. PROVIDED
	1,190 SQ. FT. PROVIDED
	2,979 SQ. FT. PROVIDED

**NOTE:** THE BUILDING USES SHOWN IN ITALICS WERE USED TO CALCULATE APPROXIMATE PARKING REQUIREMENTS AND ARE REPRESENTATIVE OF POSSIBLE FUTURE USES WHICH ARE SUBJECT TO CHANGE BASED ON FINAL BUILDING SIZE & OCCUPANCY.



**MINIMUM SETBACKS FROM R.O.W./LOT LINE:**  
 STATE HIGHWAY 67 OR COUNTY HIGHWAY 16: 50.00'  
 COUNTY MAPLE LANE (PROPOSED): 10.00'  
 SILVER MAPLE LANE (EXISTING): 100.00' (100.00' SETBACK AS A BUFFER FOR THE BENEFIT OF ADJACENT PROPERTIES ADJACENT TO THE EXISTING SOUTHERN A.D.R.E.)

**SETBACKS:**  
 COMMERCIAL FRONT YARD: 6.00'  
 INSTITUTIONAL FRONT YARD: 25.00'  
 INSTITUTIONAL REAR YARD: 100.00'  
 SIDE YARD SETBACK (ALL AREAS): 25.00'

**\*NOTE:** WHERE ROADS ARE LABELED AS PRIVATE MINIMUM SETBACK IS CALCULATED FROM THE LOT LINE OF THE OUTLOTS.  
 WETLANDS SETBACK = 75.00'  
 MINIMUM PAVEMENT SETBACK TO BE 5' FROM ANY LOT OR PROPERTY LINE.

**RESIDENTIAL SIGN ELEVATION:** N/A  
**MONUMENT SIGN ELEVATION:** N/A  
**SUMMIT VILLAGE COMMONS SIGN ELEVATION:** N/A

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-03/24/09

(ORD) NUMBER-1630101

1 D. FALSTAD.....AYE  
3 R. HUTTON.....AYE  
5 J. JESKEWITZ.....AYE  
7 P. HAUKOHL.....AYE  
9 J. HEINRICH.....AYE  
11 F. RUF.....AYE  
13 P. DECKER.....AYE  
15 P. MEYERS.....AYE  
17 J. TORTOMASI.....AYE  
19 S. WIMMER.....AYE  
21 W. ZABOROWSKI.....AYE  
23 J. PLEDL.....AYE  
25 G. YERKE.....AYE

2 T. ROLFS.....  
4 J. DWYER.....AYE  
6 J. BRANDTJEN.....AYE  
8 T. SCHELLINGER....AYE  
10 D. SWAN.....AYE  
12 P. WOLFF.....AYE  
14 B. MORRIS.....AYE  
16 D. PAULSON.....AYE  
18 K. CUMMINGS.....AYE  
20 P. JASKE.....AYE  
22 P. GUNDRUM.....AYE  
24 W. KOLB.....AYE

TOTAL AYES-24

TOTAL NAYS-00

CARRIED\_\_\_\_\_

DEFEATED\_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-24