

ENROLLED ORDINANCE 164-14

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF MUKWONAGO AND THE TOWN OF MUKWONAGO ZONING ORDINANCE BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NW ¼ OF SECTION 35, T5N, R18E, TOWN OF MUKWONAGO, WAUKESHA COUNTY, WISCONSIN, FROM THE R-2 RESIDENTIAL DISTRICT (TOWN AND COUNTY) TO THE R-3 RESIDENTIAL DISTRICT (TOWN AND COUNTY) (SZT-1686)

WHEREAS the subject matter of this Ordinance having been approved by the Mukwonago Town Board on March 18, 2009 after Public Hearing, the requisite notice of the hearing was given, the matter was duly referred to and considered by the Waukesha County Park and Planning Commission, and a recommendation for approval was made, which was reported to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, 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 Mukwonago, Waukesha County, Wisconsin, adopted on June 23, 1970, and the Town of Mukwonago Zoning Ordinance, adopted by the Town of Mukwonago on February 27, 2007, is hereby amended to conditionally rezone certain lands located in part of the NW ¼ of Section 35, T5N, R18E, Town of Mukwonago, Waukesha County, Wisconsin from the A-2 Residential District (Town and County) to the R-3 Residential District (Town and County) 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-1686), subject to the following conditions:

1. County Approval. The petitioner shall obtain the approval of the Waukesha County Board for rezoning of the subject property to the R-3 Residential District zoning classification under Chapter 82 of the Town of Mukwonago Zoning Ordinance, and the petitioner shall satisfy all comments, conditions, and concerns of such approval.
2. Certified Survey Map. The petitioner shall prepare a Certified Survey Map creating Lot 2 as generally depicted in Exhibit “A” (*of the Town of Mukwonago Ordinance No. 2009-A*) and obtain the approval of the Town Board and Waukesha County of the same.
3. Petitioner shall pay all fees, costs, and assessments due and owing to the Town of Mukwonago, including any permit fees for applicable permits, and for reimbursements of any expenses, costs and disbursements which have been incurred by the Town of Mukwonago in the drafting, review and enforcement of this zoning ordinance, including without limitation by reason of enumeration, design, engineering, inspection and legal work.
4. Professional Fees. Petitioner shall, on demand, reimburse the Town for all costs and expenses of any type that the Town incurs in connection with this development, including the cost of professional services incurred by the Town (including engineering, legal, planning and other consulting fees) for the review and preparation of required documents or attendance at meetings or other related professional services for this

application.

5. Payment of Charges. Any unpaid bills owed to the Town by the subject property owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Town; shall be placed upon the tax roll for the subject property if not paid within thirty (30) days of the billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes.

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

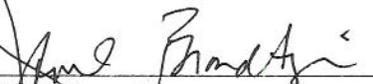
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

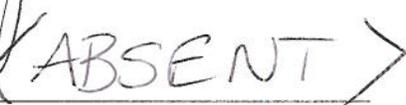
BE IT FURTHER ORDAINED that all ordinances inconsistent with or in contravention of provisions of this Ordinance are hereby repealed.

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF MUKWONAGO AND THE TOWN OF MUKWONAGO ZONING ORDINANCE BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NW ¼ OF SECTION 35, T5N, R18E, TOWN OF MUKWONAGO, WAUKESHA COUNTY, WISCONSIN, FROM THE R-2 RESIDENTIAL DISTRICT (TOWN AND COUNTY) TO THE R-3 RESIDENTIAL DISTRICT (TOWN AND COUNTY) (SZT-1686)

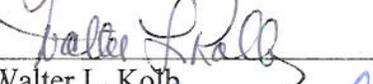
Presented by:  
Land Use, Parks, and Environment Committee

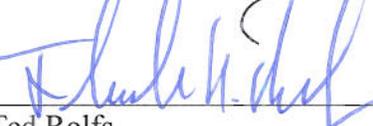
  
Fritz Ruf, Chair

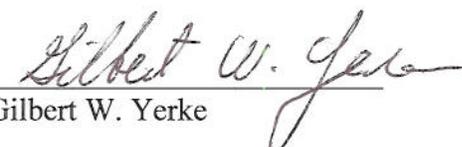
  
Janel Brandtjen

  
Robert Hutton

  
James Jeskewitz

  
Walter L. Kolb

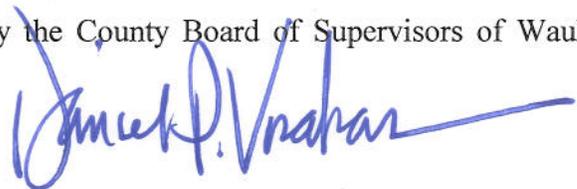
  
Ted Rolfs

  
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: May 29, 2009,   
Kathy Nickolaus, County Clerk

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

Approved:   
Vetoed: \_\_\_\_\_  
Date: 5-29-09, \_\_\_\_\_  
Daniel P. Vrakas, County Executive

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

**DATE:** April 23, 2009

**FILE NO:** SZT-1686

**PETITIONERS:** Marni Lynn & Rebecca Young (Lots 26 & 27 Phantom Lake Woods)  
W299 S10620 Phantom Woods Road  
Mukwonago, Wisconsin 53149

Estate of Ruth Vollmer (part of Lot 28, Phantom Lake Woods)  
c/o Tom Seibert, Personal Representative  
1553 S. 57<sup>th</sup> Street  
West Allis, Wisconsin 53214

**AGENT:** Atty. Shawn Reilly  
Hippenmeyer, Reilly, Moodie & Blum, S.C.  
P.O. Box 766  
Waukesha, Wisconsin 53187-0766

**TAX KEY NUMBERS:** MUKT 2010.026,  
MUKT 2010.027, and  
Part of MUKT 2010.028

**LOCATION:**

The area to be rezoned consists of two legal lots of record and approximately one-half of a third legal lot of record (Lots 26 and 27 and part of Lot 28, Phantom Lake Woods), located at W299 S10620 Phantom Woods Road, in the NW ¼ of Section 35, T5N, R18E, Town of Mukwonago. The area proposed to be rezoned, which is Lot 2 of a proposed Certified Survey Map, contains approximately 23,380 sq. ft.

**PRESENT ZONING:**

The subject property is zoned R-2 Residential, under the Waukesha County Shoreland and Floodland Protection Ordinance, and R-2 Residential and EC Environmental Corridor, under the Town of Mukwonago Zoning Ordinance. The minimum required lot area in the R-2 Residential District, under both the Town and County Zoning Ordinances, is 30,000 sq. ft. The Town of Mukwonago Zoning Ordinance requires a minimum lot area of two acres and a density of not less than five (5) acres per dwelling unit in the Environmental Corridor District. However, for lots that lie partially within and partially outside of the Environmental Corridor District, such as the subject property, the five acre density requirement does not apply and the lot can be the size permitted in the adjacent zoning district, as long as any earth-altering activity and/or building envelopes are located outside of the Environmental Corridor District, which they will be on the subject property.

**PRESENT LAND USE:**

The subject property contains a single-family residence, a detached garage and a shed.

**PROPOSED ZONING:**

The subject property is proposed to be rezoned to the R-3 Residential District, under the Waukesha County Shoreland and Floodland Protection Ordinance, and that portion of the subject property located outside of the Environmental Corridor District is proposed to be rezoned to the R-3 Residential District, under the Town of Mukwonago Zoning Ordinance. The minimum required lot area in the R-3 Residential District, under both the Town and County Zoning Ordinances, is 20,000 sq. ft.

**PROPOSED LAND USE:**

There would be no change in the use of the subject property. It would continue to contain one single-family residence, but the residence would be located on a single conforming lot, to be created by Certified Survey Map. The proposed Certified Survey Map would also combine the remainder of Lot 28 Phantom Lake Woods and the two adjacent lots to the east, Lots 30 and 31 of Phantom Lake Woods, which are owned by the Estate of Ruth Vollmer and which also contain an existing single-family residence, into another conforming lot, containing approximately 34,580 sq. ft.

**PUBLIC HEARING DATE:**

March 4, 2009.

**PUBLIC REACTION:**

None.

**TOWN PLAN COMMISSION AND TOWN BOARD ACTION:**

The Town of Mukwonago Plan Commission, at their meeting of March 4, 2009, recommended conditional approval of the requested rezoning to the Town Board and to Waukesha County. The Mukwonago Town Board, at their meeting of March 18, 2009, approved the request, in accordance with the Town Plan Commission's recommendations. The Town of Mukwonago's conditions of approval are noted on Exhibit "A".

**CONFORMANCE WITH THE WAUKESHA COUNTY DEVELOPMENT PLAN AND THE TOWN OF MUKWONAGO LAND USE PLAN**

The southern portion of the subject property (the developed portion) is designated Low Density Residential under the Waukesha County Development Plan and Medium Density under the Town of Mukwonago Land Use Plan. The northern portion of the subject property is designated Primary Environmental Corridor under the Waukesha County Development Plan and Upland Conservancy under the Town of Mukwonago Land Use Plan. Under the Waukesha County Development Plan, the recommended density in the Low Density Residential category is 20,000 sq. ft. to 1.4 acres per dwelling unit. Under the Town of Mukwonago Land Use Plan, the recommended density in the Medium Density Residential Category is 30,000 sq. ft. per dwelling unit. The recommended density in the Primary Environmental Corridor and Upland Conservancy categories is five acres per dwelling unit. The proposed rezoning is in conformance with the Waukesha County Development Plan, as all existing buildings are located outside of the Primary Environmental Corridor and the Certified Survey Map will contain restrictions preserving the Primary Environmental Corridor and prohibiting

any new buildings within the Primary Environmental Corridor. The proposed rezoning is also consistent with the Town of Mukwonago Land Use Plan because the area to be rezoned is as close to the recommended density of 30,000 sq. ft. per dwelling unit as possible, given the constraints presented by the size of the five adjacent substandard lots and the location of the existing residences, and the rezoning will not result in any additional dwelling units or increase in density.

#### **STAFF ANALYSIS:**

The subject property is a portion of five adjacent substandard lots of record that were owned by Ruth Vollmer. In 2007, Mrs. Vollmer sold the two westerly parcels (Lots 26 and 27 of Phantom Lake Woods), which had a combined lot area of approximately 17,400 sq. ft. and contained a single-family residence, a detached garage and a shed, to Marni Lynn and Rebecca Young. The three easterly parcels (Lots 28, 30, and 31 of Phantom Lake Woods), which had a combined lot area of approximately 40,560 sq. ft. and contained another single-family residence were retained by Mrs. Vollmer. The sale of Lots 26 and 27 of Phantom Lake Woods was a violation of the Town of Mukwonago Zoning Ordinance, which requires that if adjacent substandard lots of record are held in the same ownership, they cannot be sold or developed separately unless they have a minimum width of 100 ft. and a minimum area of 20,000 sq. ft. Note: The Waukesha County Shoreland and Floodland Protection Ordinance contains the same restriction regarding adjacent substandard lots of records, but has been enjoined from enforcing that restriction as a result of an appeal of a Board of Adjustment decision to the Circuit Court in 1989 (Rosemarie A. Ebner vs. Waukesha County Board of Adjustment, Case No. 89-CV-0752). Therefore, the sale of Lots 26 and 27 of Phantom Lake Woods is not a violation of the Waukesha County Shoreland and Floodland Protection Ordinance.

The parties involved have been working with the Town of Mukwonago to resolve the violation, but resolution of the violation has been complicated by the death of Mrs. Vollmer. Marni Lynn and Rebecca Young and the Personal Representative of the Estate of Ruth Vollmer are now proposing a Certified Survey Map that would divide the property into two lots, each containing one residence. Lot 1, which would be owned by the Estate of Ruth Vollmer, would be approximately 34,580 sq. ft. and Lot 2, which would be owned by Marni Lynn and Rebecca Young, would be approximately 23,380 sq. ft. Since proposed Lot 2 is less than 30,000 sq. ft. in area, a rezoning of that area, under both the Town of Mukwonago Zoning Ordinance and the Waukesha County Shoreland and Floodland Protection Ordinance, from the R-2 Residential District, which requires a minimum lot area of 30,000 sq. ft., to the R-3 Residential District, which requires a minimum lot area of 20,000 sq. ft., was requested.

#### **STAFF RECOMMENDATION:**

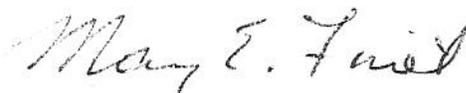
The Planning and Zoning Division Staff recommends **approval** of the proposed rezoning, subject to the conditions set forth by the Mukwonago Town Board, which are as follows:

1. County Approval. The petitioner shall obtain the approval of the Waukesha County Board for rezoning of the subject property to the R-3 Residential District zoning classification under Chapter 82 of the Town of Mukwonago Zoning Ordinance, and the petitioner shall satisfy all comments, conditions, and concerns of such approval.

2. Certified Survey Map. The petitioner shall prepare a Certified Survey Map creating Lot 2 as generally depicted in Exhibit "A" (of the Town of Mukwonago Ordinance No. 2009-A ) and obtain the approval of the Town Board and Waukesha County of the same.
3. Petitioner shall pay all fees, costs, and assessments due and owing to the Town of Mukwonago, including any permit fees for applicable permits, and for reimbursements of any expenses, costs and disbursements which have been incurred by the Town of Mukwonago in the drafting, review and enforcement of this zoning ordinance, including without limitation by reason of enumeration, design, engineering, inspection and legal work.
4. Professional Fees. Petitioner shall, on demand, reimburse the Town for all costs and expenses of any type that the Town incurs in connection with this development, including the cost of professional services incurred by the Town (including engineering, legal, planning and other consulting fees) for the review and preparation of required documents or attendance at meetings or other related professional services for this application.
5. Payment of Charges. Any unpaid bills owed to the Town by the subject property owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owned to the Town; shall be placed upon the tax roll for the subject property if not paid within thirty (30) days of the billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes.

The proposed rezoning in is conformance with Waukesha County Development Plan and will facilitate the reconfiguration of five (5) adjacent substandard lots of record, containing two residences, into two conforming lots, each containing one residence. In addition, approval of the requested rezoning will allow the proposed Certified Survey Map to be recorded, thereby resolving a long standing violation of the Town of Mukwonago Zoning Ordinance.

Respectfully submitted,



Mary E. Finet  
Senior Land Use Specialist

Attachment: Exhibit "A" and Map

N:\PRKANDLU\PLANNING AND ZONING\REZONES\STAFF REPORTS\1686 VOLLMER ESTATE LYNN & YOUNG MKT.DOC

# EXHIBIT "A"

STATE OF WISCONSIN

TOWN OF MUKWONAGO

WAUKESHA COUNTY

ORDINANCE NO. 2009-A

AN ORDINANCE TO AMEND THE TOWN OF MUKWONAGO ZONING DISTRICT MAP OF THE TOWN OF MUKWONAGO ZONING ORDINANCE BY CONDITIONALLY REZONING LOTS 26 AND 27 AND A PORTION OF LOT 28 IN PHANTOM LAKE WOODS IN THE SW¼ OF THE NW¼ OF SECTION 35, T5N, R18E, IN THE TOWN OF MUKWONAGO, FROM R-2 RESIDENTIAL DISTRICT TO R-3 RESIDENTIAL DISTRICT

WHEREAS, Marni S. Lynn and Rebecca L. Young and the estate of Ruth Vollmer (collectively, the "petitioner") have submitted a petition to change the zoning classification of lots 26 and 27 and a portion of lot 28 in Phantom Lake Woods, being part of the SW¼ of the NW¼ of Section 35, T5N, R18E, Town of Mukwonago, Waukesha County (subject property), from R-2 Residential District to R-3 Residential District; and

WHEREAS, the petitioner has submitted this petition for rezoning pursuant to a condition of approval for the merger of substandard lots by certified survey map as approved by the Town Board for the Town of Mukwonago (application 2008-16); and

WHEREAS, the petitioner has supplied all required data pursuant to the Town of Mukwonago's zoning ordinance; and

WHEREAS, the rezoning petition has been submitted to the Town Plan Commission of the Town of Mukwonago for report and recommendation; and

WHEREAS, the Town Board and the Plan Commission for the Town of Mukwonago conducted a public hearing on March 4, 2009 in conjunction with a representative of Waukesha County; and

WHEREAS, the Town Plan Commission of the Town of Mukwonago has recommended to the Town Board of the Town of Mukwonago that said rezoning change may be made under certain conditions; and

WHEREAS, the Town Board of the Town of Mukwonago, after careful review and upon consideration of the recommendation of the Town Plan Commission of the Town of Mukwonago, having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration and having based its determination on the effect of granting of said 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 surrounding properties as to the noise, dust, smoke, odor and others, has hereby determined that the rezoning will not violate the spirit or intent the Zoning Ordinance for the Town of Mukwonago, will not be contrary to the public health, safety or general welfare of the Town of Mukwonago, 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 affect on the property values and general desirability of the neighborhood as long as the development is conducted pursuant to the following conditions and is in strict compliance with the same.

NOW, THEREFORE, the Town Board of the Town of Mukwonago, Waukesha County, Wisconsin, ordains as follows:

**SECTION 1: ZONING MAP CHANGE.**

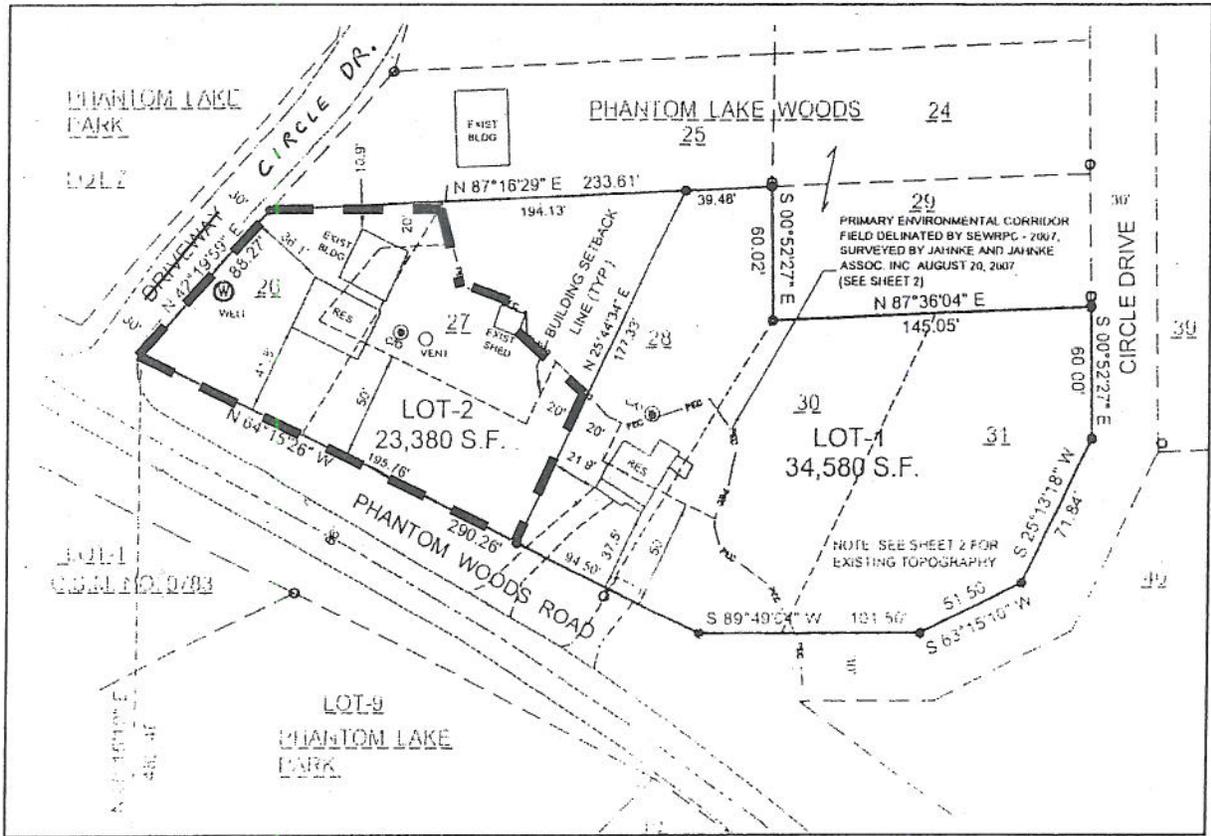
The zoning map of the Town of Mukwonago is hereby conditionally amended to change the zoning designation of the subject property as generally delineated in Exhibit A, from R-2 Residential District to R-3 Residential District.

164-0-014

8.

**EXHIBIT "A"**

Exhibit A



**SECTION 2: CONDITIONS OF REZONING.**

The zoning amendment conditionally granted under Section 1 of this ordinance is conditioned on the petitioner's compliance with the following conditions:

- A. **County Approval.** The petitioner shall obtain the approval of the Waukesha County Board for the rezoning of the subject property to the R-3 Residential District zoning classification under Chapter 82 of the Town of Mukwonago Zoning ordinance, and the petitioner shall satisfy all comments, conditions, and concerns of such approval.
- B. **Certified Survey Map.** The petitioner shall prepare a certified survey map creating lot 2 as generally depicted in Exhibit A and obtain the approval of the Town Board and Waukesha County of the same.
- C. Petitioner shall pay all fees, costs, and assessments due and owing to the Town of Mukwonago, including any permit fees for applicable permits, and for reimbursements of any expenses, costs and disbursements which have been incurred by the Town of Mukwonago in the drafting, review and enforcement of this zoning ordinance, including without limitation by reason of enumeration, design, engineering, inspection and legal work.
- D. **Professional Fees.** Petitioner shall, on demand, reimburse the Town for all costs and expenses of any type that the Town incurs in connection with this development, including the cost of professional services incurred by the Town (including engineering, legal, planning and other consulting fees) for the review and preparation of required documents or attendance at meetings or other related professional services for this application.
- E. **Payment of Charges.** Any unpaid bills owed to the Town by the subject property owner or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Town; shall be placed upon the tax roll for the subject property if not paid within thirty (30) days of the billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes.

The petitioner shall comply with each of the conditions stated in this section within one year of the granting of the conditional rezoning.

**SECTION 3: CERTIFICATION.**

Upon certification by the Town Clerk that the aforementioned conditions have been satisfied, the Town Planner shall change the zoning classification of the subject property as generally depicted in exhibit A on the Town of Mukwonago zoning map from R-2 Residential District to R-3 Residential District.

**SECTION 4: SEVERABILITY.**

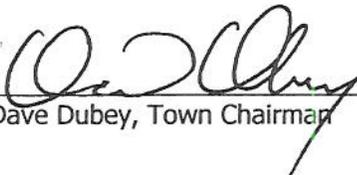
The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed to those terms that conflict.

**SECTION 5: EFFECTIVE DATE.**

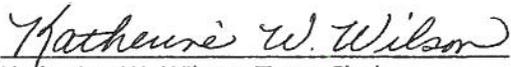
This ordinance shall be in full force and effect from and after its passage and posting or publication as provided by law subject to the conditions stated in Section 2, and this ordinance is null and void and the R-2 zoning classification shall be in effect with no further notice if such conditions are not complied with on the terms and conditions stated herein.

Approved this 18<sup>th</sup> day of March, 2009

TOWN OF MUKWONAGO

  
\_\_\_\_\_  
Dave Dubey, Town Chairman

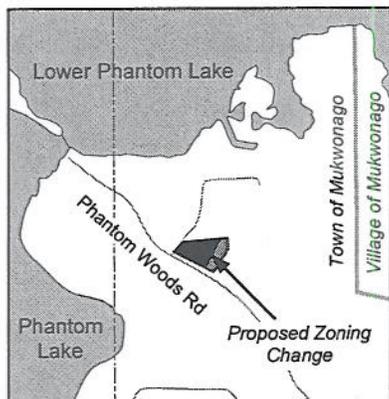
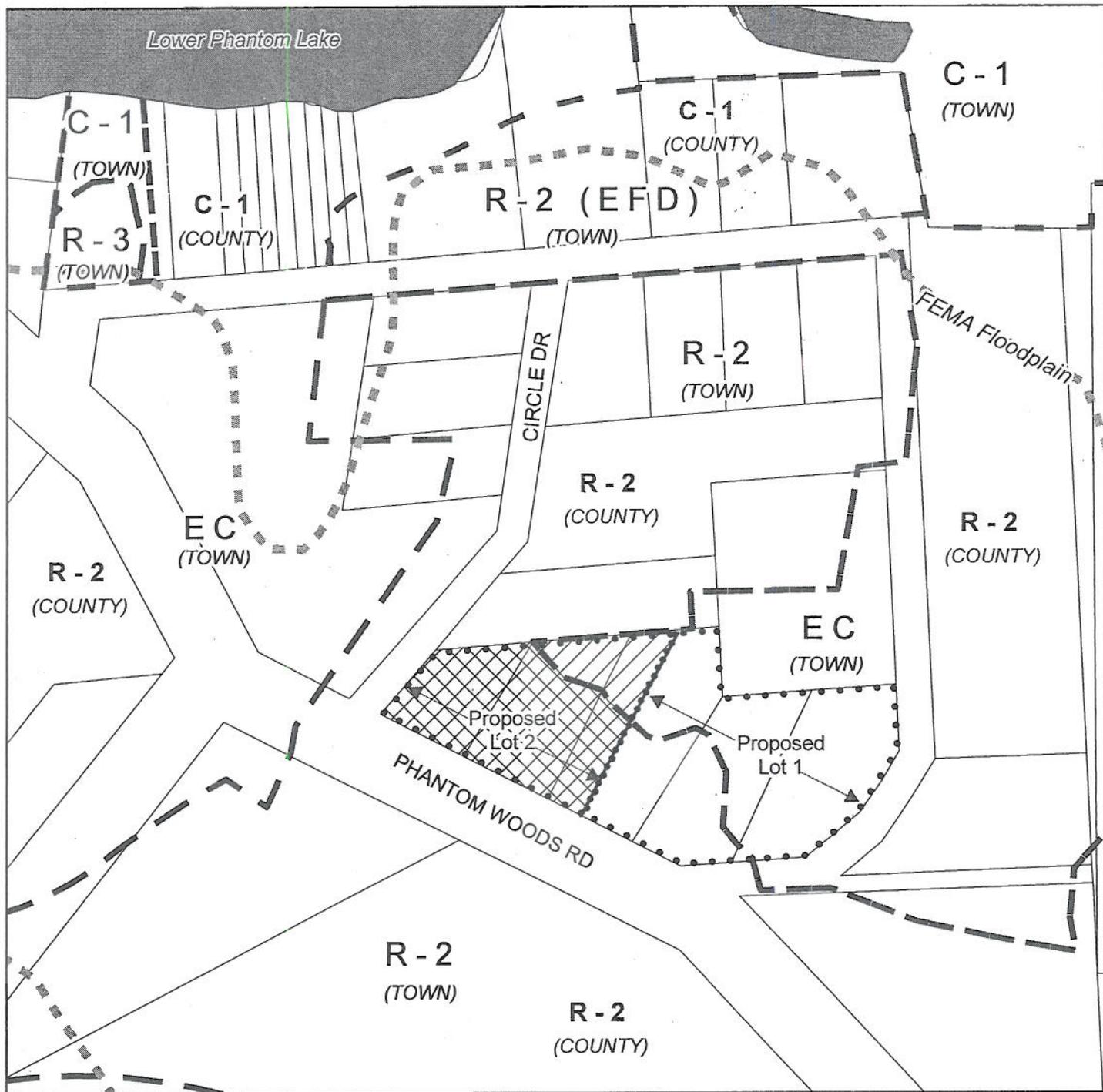
ATTEST:

  
\_\_\_\_\_  
Katherine W. Wilson, Town Clerk

Published and/or posted this 2<sup>nd</sup> day of April, 2009

# ZONING MAP AMENDMENT

PART OF THE NW 1/4 OF SECTION 35  
TOWN OF MUKWONAGO



CONDITIONAL TOWN ZONING CHANGE FROM R-2 RESIDENTIAL TO R-3 RESIDENTIAL



CONDITIONAL SHORELAND ZONING CHANGE FROM R-2 RESIDENTIAL TO R-3 RESIDENTIAL

FILE.....SZT-1686

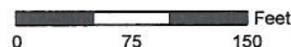
DATE.....04-23-09

AREA OF CHANGE.....0.5 ACRES

TAX KEY NUMBERS.....MUKT 2010.026, .027, & PART OF .028



1 inch = 125 feet



Prepared by the Waukesha County Department of Parks and Land Use

164-0-014

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-05/26/09

(ORD) NUMBER-1640014

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.....

2 T. ROLFS.....AYE  
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.....  
24 W. KOLB.....AYE

TOTAL AYES-23

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-23