

ENROLLED ORDINANCE 163-57

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 SE ¼ OF SECTION 21, T7N, R17E, TOWN OF SUMMIT, WAUKESHA COUNTY, WISCONSIN, FROM THE A-P AGRICULTURAL LAND PRESERVATION DISTRICT (COUNTY) AND THE A-1 AGRICULTURAL DISTRICT-1 (TOWN) TO THE A-5 MINI-FARM DISTRICT (COUNTY) AND THE A-2 AGRICULTURAL DISTRICT-2 (TOWN) (SZT-1664A)

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 SE ¼ of Section 21, T7N, R17E, Town of Summit, from the A-P Agricultural Land Preservation District (County) and the A-1 Agricultural District-1 (Town) to the A-5 Mini-Farm District (County) and the A-2 Agricultural District-2 (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-1664A) subject to the following conditions:

1. SUBJECT TO PLAN PRESENTATION AND COMPLIANCE. The Subject Property will continue to be used as agricultural field crops and other agricultural uses, as presented at the public hearing on August 14, 2008. If any use is proposed in the future that does not comply with the permitted, accessory, or conditional uses listed in the A-2, Agricultural District of the Town Code of the Town of Summit, Petitioner must submit, and receive approval from the Town of Summit Town Board for any change in zoning that is necessary for such proposed use.
2. SUBJECT TO CERTIFIED SURVEY MAP. Petitioner shall comply with all conditions of approval of the Certified Survey Map (CSM), if said approval is granted. The CSM shall be subject to the approval of the Town of Summit Town Plan Commission and Town Board. In addition, all terms and conditions of the Town of Summit Code shall be complied with in all respects, along with all applicable rules ordinances, statutes and other procedures related to said CSM, and subject to satisfying any conditions that may be imposed upon that land division, prior to this conditional rezoning ordinance being effective.
3. SUBJECT TO AGENCY APPROVALS. Petitioner shall request and obtain approval from Waukesha County for a rezoning of the Waukesha County Shoreland and Floodland Protection Ordinance and comply with any and all conditions placed on that decision.

4. **SUBJECT TO ADEQUATE SEPTIC SYSTEM.** Petitioner shall submit proof that each of the lots shown in the CSM has adequate soils to maintain an on-site septic system to the Town Manager/Planner, subject to the Town Engineer's approval as to reliability of the information and form, and subject to such approval being granted by the Town Engineer prior to this conditional zoning ordinance being effective.
5. **SUBJECT TO REIMBURSEMENT OF EXPENSES.** Petitioner shall pay all fees, costs, and assessments due and owing to the Town of Summit, including any permit fees for applicable permits, and for reimbursement of any expenses, costs and disbursements which have been incurred by the Town of Summit in the drafting, review or enforcement of this rezoning ordinance, including without limitation by reason of enumeration, design, engineering, inspection and legal work.
6. **PAYMENT OF CHARGES.** Any unpaid bills owed to the Town by the Petitioner or Subject Property Owner or his or her tenants, operators or occupants, for a reimbursement of professional fees (and expenses) as described; or for personal property taxes; or for real property taxes; or for licenses, permit fees or for 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 billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this Conditional Rezoning Ordinance, that is subject to all remedies available to the Town, including possible cause for termination of the conditional approval.
7. **ONE YEAR TO SATISFY CONDITIONS.** All of the aforementioned conditions must be satisfied within one year of the date of Town Board approval of this rezoning ordinance, unless extended by the Town of Summit Town Board, or this conditional rezoning ordinance shall be null and void.
8. **SUBJECT TO ACCEPTANCE.** Petitioner and Property Owner acknowledging in writing that they have received a copy of this conditional approval, that they understand and accept the same, and that upon failure to satisfy these conditions this approval is void, and the same is deemed to not have been approved, and the property owner will therefore need to re-commence the application process.
9. **SUBJECT TO SUCCESSFUL CLOSING.** This Conditional Rezoning Ordinance will be void in the event that the Petitioner does not successfully close on the purchase of the southern portion of the Subject Property from the Owners on or before March 11, 2009. Provided, however, that any obligations of Petitioner for payment of amounts to the Town of Summit or any other party under this agreement shall continue beyond such termination.
10. The shed be allowed to remain on the property so long as a letter of credit equal to the cost of the removal of the structure plus 15% is provided to the Planning and Zoning Division.

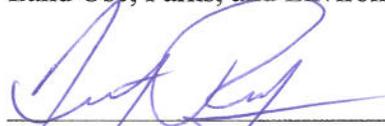
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Summit.

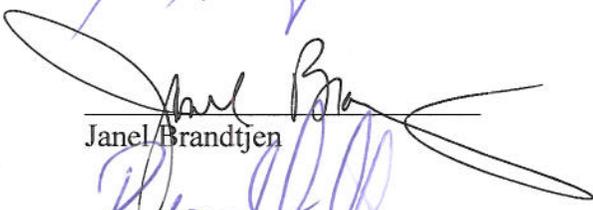
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

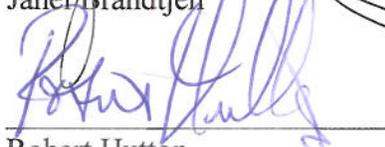
BE IT FURTHER ORDAINED that all ordinances inconsistent with or in contravention of provisions of this Ordinance are hereby repealed.

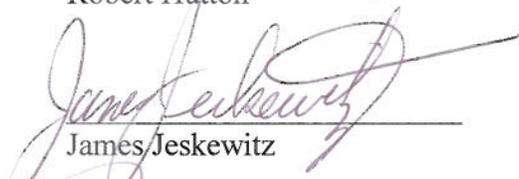
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IN PART OF THE SE ¼ OF SECTION 21, T7N, R17E, TOWN OF SUMMIT, WAUKESHA COUNTY,
WISCONSIN, FROM THE A-P AGRICULTURAL LAND PRESERVATION DISTRICT (COUNTY)
AND THE A-1 AGRICULTURAL DISTRICT-1 (TOWN) TO THE A-5 MINI-FARM DISTRICT
(COUNTY) AND THE A-2 AGRICULTURAL DISTRICT-2 (TOWN) (SZT-1664A)

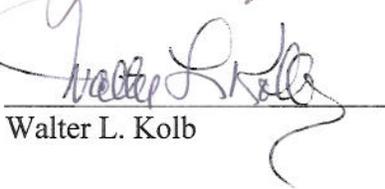
Presented by:
Land Use, Parks, and Environment Committee


Fritz Ruf, Chair


Janel Brandtjen


Robert Hutton

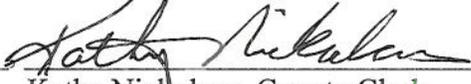

James Jeskewitz


Walter L. Kolb

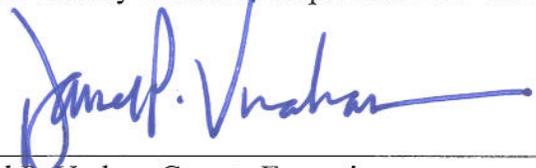
Absent
Ted Rolfs

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: 11-14-08 
Kathy Nickolaus, County Clerk

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

Approved: X
Vetoed: _____
Date: 11-17-08, 
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-11/12/08

(ORD) NUMBER-1630059

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 J. BEHREND.....AYE
 15 P. MEYERS.....AYE
 17 J. TORTOMASI.....AYE
 19 S. WIMMER.....AYE
 21 W. ZABOROWSKI.....AYE
 23 J. PLEDEL.....AYE
 25 G. YERKE.....AYE

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.....AYE
 24 W. KOLB.....AYE

TOTAL AYES-25

TOTAL NAYS-00

CARRIED _____

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-25

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

FILE NO.: SZT-1664A

TAX KEY NO.'S: OCOT 0660.999

DATE: October 16, 2008

PETITIONER: Hope Evangelical Lutheran Church Lake Country, Inc.
143 N. Main St.
Dousman, WI 53118

OWNER: Paul and Kathleen Erdmann
1490 N. Dousman Rd.
Oconomowoc, WI 53066

LOCATION:
Part of the SE ¼ of Section 21, T7N, R17E, Town of Summit. More specifically, the property is located at approximately 1335 N. Dousman Rd and consists of approximately 62 acres.

PRESENT ZONING:
A-P Agricultural Land Preservation District (County Shoreland) and A-1 Agricultural District-1 (Town).

PRESENT LAND USE:
Agricultural with a vacant house and several outbuildings.

PROPOSED ZONING:
A-5 Mini-Farm District (County Shoreland) and A-2 Agricultural District-2 (Town).

PROPOSED LAND USE:
Agricultural- divide property to facilitate sale of southerly 28 acres to Hope Evangelical Lutheran Church.

PUBLIC HEARING DATE: August 14, 2008.

PUBLIC REACTION:
One nearby resident spoke and expressed concern about standing water on the property. He stated his support for a potential future church use but noted that he would not like to see any form of a residential rehabilitation facility on the site.

TOWN PLAN COMMISSION AND TOWN BOARD ACTIONS:
The Town of Summit Plan Commission recommended conditional approval of the rezoning request to the Town Board at their meeting of September 18, 2008. On October 2, 2008, the Town of Summit Board voted to conditionally approve the rezoning request in accordance with the recommendation of the Plan Commission (see Exhibit "A"). The Town conditioned their approval of the rezoning upon the property being divided by Certified Survey Map and that the property continue to be used for agricultural purposes and that any future use must comply with the permitted or conditional use standards of the A-2 zoning district.

COMPLIANCE WITH THE WAUKESHA COUNTY DEVELOPMENT PLAN AND THE TOWN OF SUMMIT LAND USE PLAN:

The Waukesha County Development Plan designates the subject lands in the Suburban Density I Residential category (1.5-2.9 acres per dwelling unit). The Town of Summit Land Use Plan designation for the lands is Single Family Residential (2.4 acres per dwelling unit). The proposed land split creating two large parcels is consistent with both plans.

163-0-059

STAFF ANALYSIS:

The proposed rezoning request has been filed to facilitate a division of a 62-acre parcel located to the west of Dousman Road and north of Genesee Lake Road. The southerly 28 acres would be acquired by Hope Evangelical Lutheran Church for a potential future church site, while the northerly 33.7 acres would be retained by the current owners, Paul and Kathleen Erdmann. The current zoning designations of A-P (County Shoreland) and A-1 (Town) both require a minimum parcel size of 35 acres. The proposed A-5 designation allows for a five (5) acre minimum parcel size, while the proposed Town zoning designation of A-2 allows for a minimum 10-acre density. The petitioner has presented a Certified Survey Map to Waukesha County depicting the proposed division (see Exhibit "B"). The vast majority of the acreage is being actively farmed, with the only exception being the area which is occupied by an abandoned residence and a few outbuildings. The church has indicated that the house is beyond repair and will be razed at some point in the future. The church also intends to remove a number of other agricultural outbuildings. There is one steel outbuilding that the church has considered retaining. The church currently lacks storage space and believes that the outbuilding, which is in good shape, could be serviceable for such use. However, once the existing house is removed, the remaining outbuildings within Waukesha County's jurisdiction must be removed, as the Shoreland ordinance does not allow for accessory buildings on parcels without a principal structure, unless the property is located on a parcel of at least 35 acres.

Waukesha County has allowed for accessory structures to be retained in some instances for a finite number of years so long as a letter of credit equal to the cost of removal of the structure plus 15% is provided to the Planning and Zoning Division. The petitioner has been informed that they should contact Staff if they wish to pursue such an option prior to the house being razed.

The church has no immediate plans to abandon the agricultural use of the lands it will acquire, as the church anticipates that it is a number of years away from being able to construct a church in this location. A church would be permissible in the A-5 Mini Farm District by Conditional Use or as a permitted use with a rezoning to the P-I Public and Institutional District under the County Shoreland Ordinance. Under the Town's zoning code, a church would require a rezone to the IN Institutional District and a Conditional Use. The church had previously filed an application in 2007 to rezone to the above referenced institutional districts but later withdrew that application, because the construction of the church is still a good number of years off, and thus, the church was not prepared to bring forward the formal plans that the Town required for review of such a request.

STAFF RECOMMENDATION:

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

1. All conditions of the Town of Summit Board, as detailed in attached Town Ordinance #282-08 (see Exhibit "A") shall be an integral part of this approval.

Staff believes that, as conditioned, the rezoning request will allow the owner to divide the property in a manner that is consistent with density parameters of both the Town and County Development Plans. The continued agricultural use of the lands in the near future is consistent with the zoning and plan designations for the property.

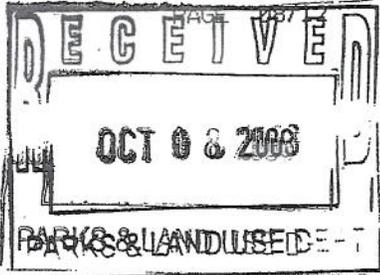
Respectfully submitted,



Jason Fruth
Senior Planner

Attachment: Exhibits "A", "B" and Map

EXHIBIT "A"



STATE OF WISCONSIN TOWN OF SUMMIT WAUKESHA COUNTY

ORDINANCE NO. 282-08

AN ORDINANCE TO CONDITIONALLY REZONE AND AMEND THE
TOWN OF SUMMIT ZONING DISTRICT MAP
OF THE TOWN OF SUMMIT CODE
BY PLACING CERTAIN LANDS IN THE TOWN OF SUMMIT
FROM THE A-1 AGRICULTURAL DISTRICT (SECTION 235-41)
TO THE A-2 AGRICULTURAL DISTRICT (SECTION 235-42).

WHEREAS, a petition (the "Petition") was filed on June 18, 2008 by Daniel A. Gotter and Brian Porter as agents for Hope Evangelical Lutheran Church Lake Country, Inc., (hereinafter "PETITIONER"), to rezone certain property at 1335 North Dousman Road in the Town of Summit, as further described herein and incorporated by reference as Exhibit A (the "Subject Property"); and

WHEREAS, Paul A. and Kathleen Erdmann (the "Owners") own the Subject Property and consented to the Petition by Petitioner; and

WHEREAS, said rezoning petition was submitted to rezone the Subject Property from A- 1 Agricultural District (Section 235-41 of the Town Code) to the A-2 Agricultural District (Section 235-42 of the Town Code); and

WHEREAS, the Petitioner has supplied all required data pursuant to the Town Code, and a public hearing was conducted by the Town Plan Commission of the Town of Summit on August 14, 2008 as required by Section 235-80(B)(5) of the Town Code, upon due notice as required by Section 235-81 of the Town Code; and

WHEREAS, the Town Board of the Town of Summit, 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 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 surrounding properties as to noise, dust, smoke and odor, and others, hereby determine that the rezoning will not violate the spirit or intent of the Town Code, will not be contrary to the public health, safety or general welfare of the Town of Summit, will not be hazardous, harmful, noxious, offensive 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,

NOW, THEREFORE, the Town Board of the Town of Summit, Waukesha County, Wisconsin, DO ORDAIN as follows:

SECTION 1: The subject property is hereby rezoned to A-2, Agricultural District, and the Zoning Map of the Town of Summit is hereby amended to change the zoning of the subject property from A-1 Agricultural District (Section 235-41 of the Town Code) to the A-2, Agricultural District (Section 235-42 of the Town Code) if the conditions stated in Section 2 of this ordinance are complied with.

SECTION 2: The above rezoning and zoning map amendment is conditioned upon the following conditions, which must be complied with or this ordinance is null and void:

- A. SUBJECT TO PLAN PRESENTATION AND COMPLIANCE. The Subject Property will continue to be used as agricultural field crops and other agricultural uses, as presented at the public hearing on August 14, 2008. If any use is proposed in the future that does not comply with the permitted, accessory, or conditional uses listed in the A-2, Agricultural District of the Town Code of the Town of Summit, Petitioner must submit, and receive approval from the Town of Summit Town Board for any change in zoning that is necessary for such proposed use.
- B. SUBJECT TO CERTIFIED SURVEY MAP. Petitioner shall comply with all conditions of approval of the Certified Survey Map (CSM), if said approval is granted. The CSM shall be subject to the approval of the Town of Summit Town Plan Commission and Town Board. In addition, all terms and conditions of the Town of Summit Code shall be complied with in all respects, along with all applicable rules ordinances, statutes and other procedures related to said CSM, and subject to satisfying any conditions that may be imposed upon that land division, prior to this conditional rezoning ordinance being effective.
- C. SUBJECT TO AGENCY APPROVALS. Petitioner shall request and obtain approval from Waukesha County for a rezoning of the Waukesha County Shoreland and Floodland Protection Ordinance and comply with any and all conditions placed on that decision.
- D. SUBJECT TO ADEQUATE SEPTIC SYSTEM. Petitioner shall submit proof that each of the lots shown in the CSM has adequate soils to maintain an on-site septic system to the Town Manager/Planner, subject to the Town Engineer's approval as to reliability of the information and form, and subject to such approval being granted by the Town Engineer prior to this conditional zoning ordinance being effective.
- E. SUBJECT TO REIMBURSEMENT OF EXPENSES. The Petitioner shall pay all fees, costs, and assessments due and owing to the Town of Summit, including any permit fees for applicable permits, and for reimbursement of any expenses, costs and disbursements which have been incurred by the Town of Summit in the drafting, review or enforcement of this rezoning ordinance,

including without limitation by reason of enumeration, design, engineering, inspection and legal work.

- F. **PAYMENT OF CHARGES.** Any unpaid bills owed to the Town by the Petitioner or Owner or his or her tenants, operators or occupants, for a reimbursement of professional fees (and expenses) as described; or for personal property taxes; or for real property taxes; or for licenses, permit fees or for 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 billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this Conditional Rezoning Ordinance, that is subject to all remedies available to the Town, including possible cause for termination of the conditional approval. Petitioner will hold Owner harmless from and indemnify Owner against any such charges.
- G. **ONE YEAR TO SATISFY CONDITIONS.** All of the aforementioned conditions must be satisfied within one year of the date of Town Board approval of this rezoning ordinance, unless extended by the Town of Summit Town Board, or this conditional rezoning ordinance shall be null and void.
- H. **SUBJECT TO ACCEPTANCE.** Subject to the Petitioner and Property Owner acknowledging in writing that they have received a copy of this conditional approval, that they understand and accept the same, and that upon failure to satisfy these conditions this approval is void, and the same is deemed to not have been approved, and the property owner will therefore need to re-commence the application process.
- I. **SUBJECT TO SUCCESSFUL CLOSING.** This Conditional Rezoning Ordinance will be void in the event that the Petitioner does not successfully close on the purchase of the southern portion of the Subject Property from the Owners on or before March 11, 2009. Provided, however, that any obligations of Petitioner for payment of amounts to the Town of Summit or any other party under this Agreement shall continue beyond such termination.

SECTION 3. The Town Engineer is hereby authorized and directed to note this rezoning on the Official Zoning Map of the Town of Summit upon successful development of the subject property and satisfaction of all conditions in Section 2 of this ordinance.

SECTION 4. The property owner is hereby put on notice that the Town of Summit may rezone the lands or portions thereof subject to this conditional rezoning ordinance to A-1 Agricultural District if the conditions of this ordinance are not fully complied with.

SECTION 5. SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section of 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 as to those terms that conflict.

SECTION 6. EFFECTIVE DATE.

This ordinance shall be in full force and effect from and after its passage and publication and subject to the conditions stated in Section 2, and this ordinance is null and void and original district zoning shall be in effect with no further notice if said conditions are not complied with on the terms and conditions stated herein.

Passed and adopted this 2nd day of October, 2008.

TOWN OF SUMMIT

Leonard J. Susa
Leonard Susa, Town Chair

ATTEST:

Debra J. Schueler
Debra J. Schueler, Town Clerk

Published and posted this 10th day of October, 2008.

APPROVAL OF PETITIONER
Hope Evangelical Lutheran Church Lake Country, Inc.

By: Daniel A. Gotter

Printed Name: Daniel A. Gotter

Dated this 8th day of October, 2008

APPROVAL OF SUBJECT PROPERTY OWNER

SUBJECT PROPERTY OWNER

Paul A. Erdmann and Kathleen M. Erdmann

By: *K. Erdmann*
Authorized Signatory

Printed Name: *Kathleen Erdmann*

Dated this *8* day of *October*, 2008

This instrument drafted by
Henry J. Elling, Town Manager/Planner
C:\MyFiles\Ordinance\hope evangelical rezoning

EXHIBIT "B"

RECEIVED
JUN 25 2008

TOWN OF PARKS & LAND USE

CERTIFIED SURVEY MAP NO. _____

BEING A PART OF THE SW 1/4, NW 1/4, NE 1/4 AND SE 1/4 OF THE SE 1/4 OF SECTION 21, T.7N., R.17E., TOWN OF SUMMIT, WAUKESHA COUNTY, WI.

SURVEYOR

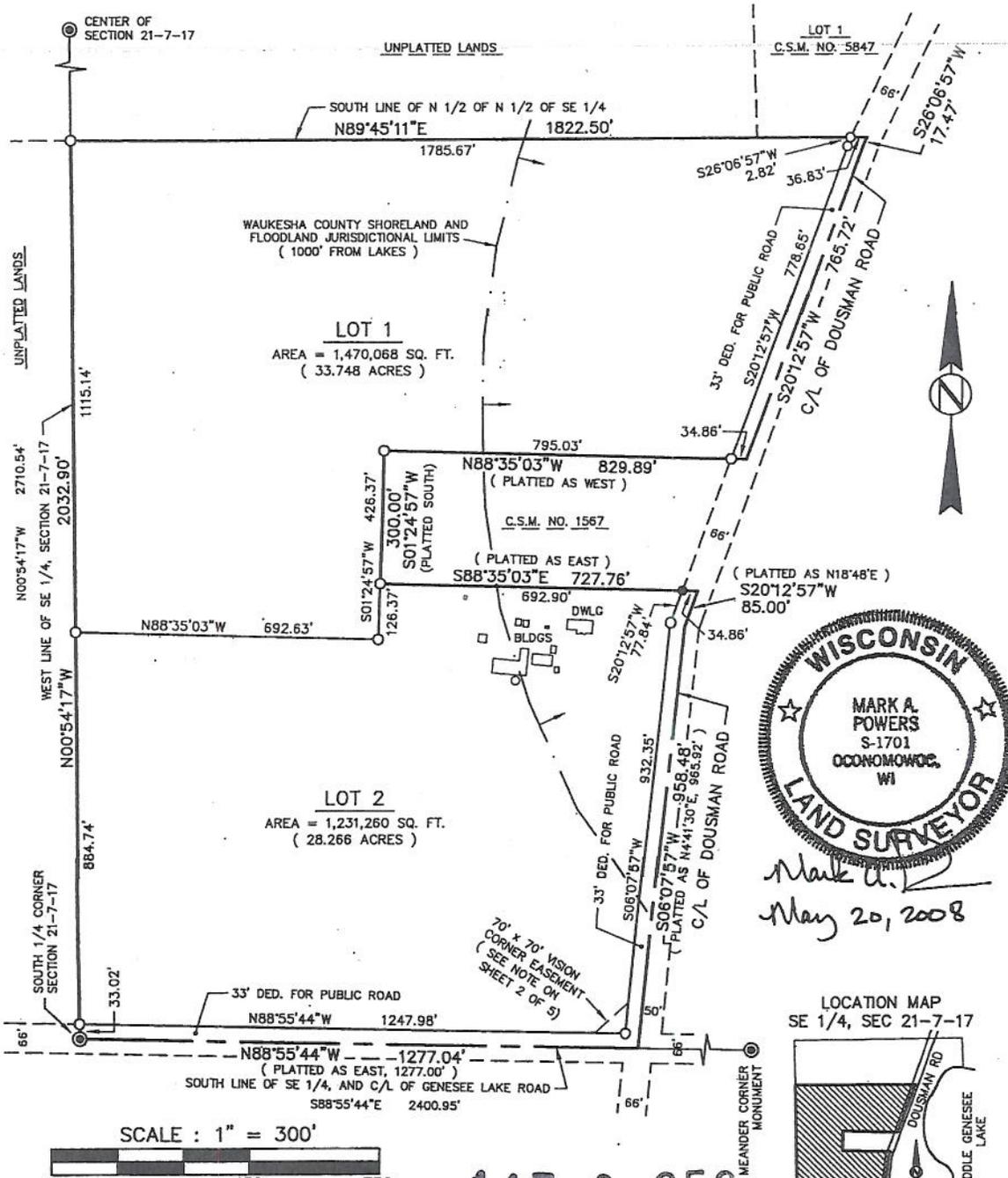
MARK A. POWERS, RLS 1701
LAKE COUNTRY ENGINEERING, INC.
W359 N5920 BROWN ST., SUITE 102
OCONOMOWOC, WI. 53066
(262)569-9331

SURVEY FOR

PAUL & KATHLEEN ERDMANN
1490 N. DOUSMAN ROAD
OCONOMOWOC, WI. 53066

LEGEND

- ⊙ - CONC MON W/ BRASS CAP
- - 1.25" O.D. IRON PIPE SET, 18" LONG, WT. = 1.68 LBS/LIN. FT.
- - 1.25" O.D. IRON PIPE FOUND



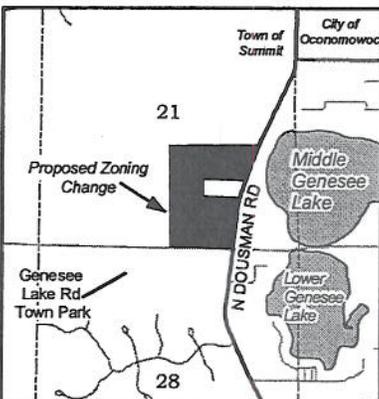
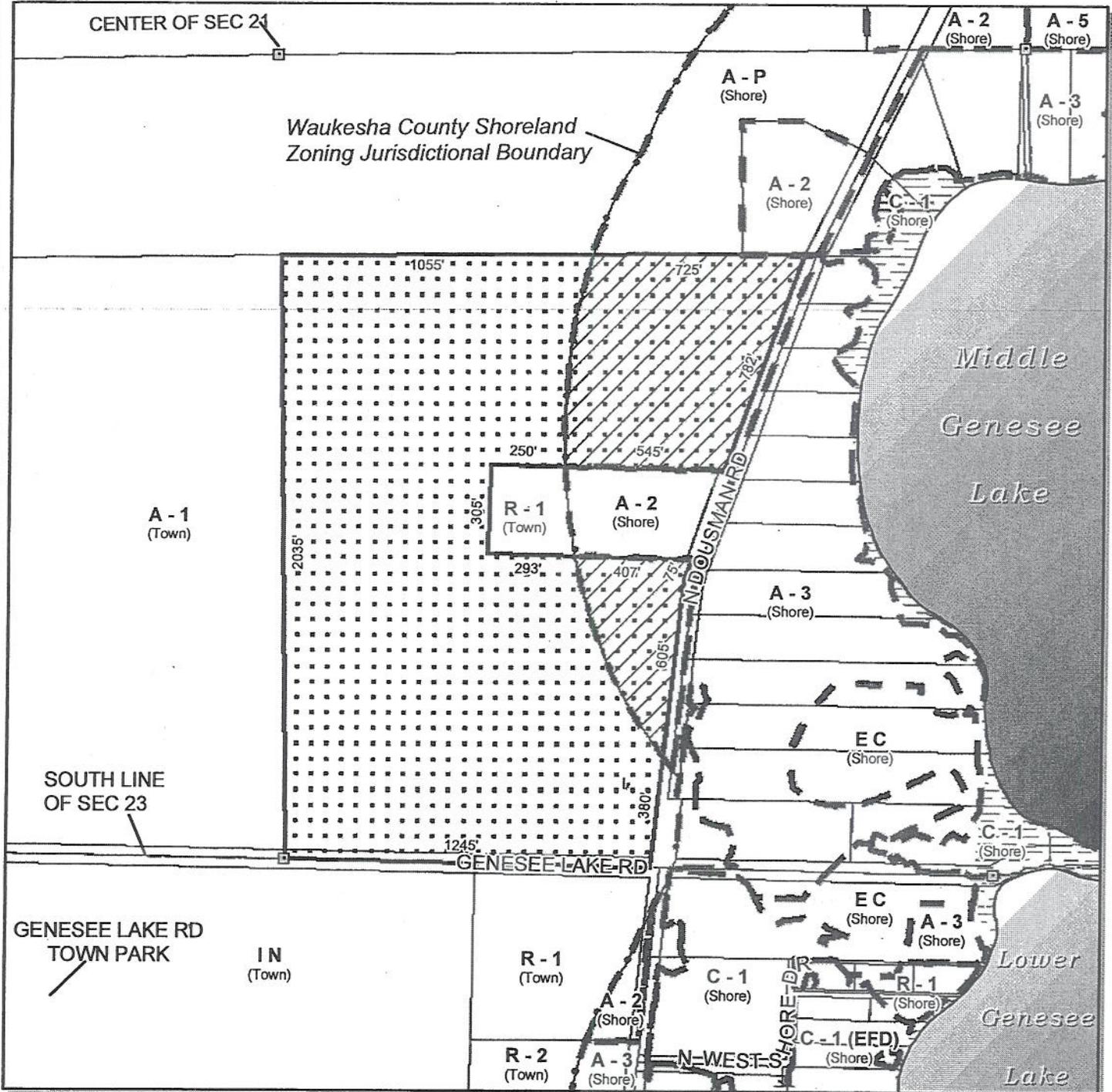
BEARINGS REFERENCED TO STATE PLANE COORD (NAD 27) ON THE WEST LINE OF THE SE 1/4 OF SECTION 21-7-17, AS BEARING N00°54'17"W

163-0-059

12

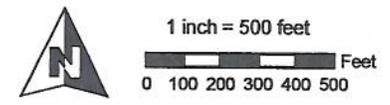
ZONING MAP AMENDMENT

PART OF THE SE 1/4 OF SECTION 21
TOWN OF SUMMIT



-  TOWN ZONING CHANGE FROM A-1 AGRICULTURAL DISTRICT-1 TO A-2 AGRICULTURAL DISTRICT-2 (62.95 AC)
-  SHORELAND ZONING CHANGE FROM A-P AGRICULTURAL LAND PRESERVATION DISTRICT TO A-5 MINI FARM DISTRICT (14.3 AC)

FILE.....SZT-1664A
 DATE.....10/16/08
 AREA OF CHANGE.....62.95 ACRES
 TAX KEY NUMBER.....SUMT 0660-999



Prepared by the Waukesha County Department of Parks and Land Use

163-0-059

B