

ENROLLED ORDINANCE 164-28

AMEND THE DISTRICT ZONING MAP OF THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE AND THE WAUKESHA COUNTY ZONING CODE, FOR THE TOWN OF GENESEE BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE SW ¼ AND SE ¼ OF SECTION 12, T6N, R18E, TOWN OF GENESEE, FROM THE B-3 GENERAL BUSINESS, A-2 RURAL HOME, A-B AGRICULTURAL BUSINESS AND THE A-E EXCLUSIVE AGRICULTURAL CONSERVANCY DISTRICTS TO THE B-3 GENERAL BUSINESS AND THE C-1 CONSERVANCY DISTRICTS AND REVISIONS TO PREVIOUSLY IMPOSED CONDITIONS OF APPROVAL UNDER ENROLLED ORDINANCE NO. 163-22 (CZ-0819A) TO ALLOW SEVERAL BUSINESS USES ON THE PROPERTY (SCZ-0819B)

WHEREAS the subject matter of this Ordinance having been approved by the Genesee Town Board on June 8, 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 Environmental Committee, and the Waukesha County Board of Supervisors, Waukesha County, Wisconsin, as required by Section 59.69 and 59.692 of the Wisconsin State Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the District Zoning Maps of the Waukesha County Shoreland and Floodland Protection Ordinance adopted on June 23, 1970, and the Waukesha County Zoning Code adopted on February 26, 1959, for the Town of Genesee, Waukesha County, Wisconsin, are hereby amended to conditionally rezone certain lands located in part of the SW ¼ and SE ¼ of Section 12 , T6N, R18E, Town of Genesee, from the B-3 General Business, A-2 Rural Home and the A-B Agricultural Business and the A-E Exclusive Agricultural Conservancy Districts to the B-3 General Business and the C-1 Conservancy Districts and revisions to previously imposed conditions of approval under Enrolled Ordinance No 163-22 to allow several additional business uses on the property (CZ-0819A), 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 (SCZ-0819B), subject to the following conditions:

1. The businesses permitted on the subject parcels shall be limited to the repair and service shop for automobiles, motorcycles, lawn mowers, and other small engines; garages for the storage of vehicles used in conjunction with the operation of a permitted business; cabinet and furniture construction and assembly (woodworking); contractor’s offices and associated warehouses; indoor storage associated with an office use; professional offices and studios; light assembly as deemed appropriate by the Town Plan Commission and Waukesha County Zoning Administrator; metal fabricating in conjunction with equipment repairs, welding, engine repairs, equipment painting, mini-storage facilities and any other similar use as may be allowed by the Town Plan Commission and Waukesha County Zoning Administrator.
2. A Deed Restriction shall be recorded in the Waukesha County Register of

Deeds Office within six (6) months of passage of this Ordinance by the County Board of Supervisors stating that the rights granted herein are only transferable to any subsequent owner of the property upon approval of the Town of Genesee Board. Proof of filing shall be submitted to the Town Clerk and the Waukesha County Zoning Administrator prior to this Ordinance becoming effective. The legal description on the deed must accurately reflect the lands subject to this approval.

3. If any of the approved uses become a nuisance to the surrounding neighborhood or are detrimental to the natural resources, the Town and County Plan Commissions may proceed with the termination of the affecting uses in accordance with the provisions set forth in the Waukesha County Zoning Code and Waukesha County Shoreland and Floodland Protection Ordinance.
4. Prior to any of the existing uses being legalized, Site Plan and Plan of Operation Permits must be granted and all Environmental Health Division concerns must be addressed.
5. Any outdoor storage on the property must be specifically approved through the Site Plan/Plan of Operation process.
6. The existing duplexes must be removed within five (5) years of the effective date of this ordinance, as the multi-family residential use does not comply with the B-3 General Business District standards.
7. All areas delineated as wetland and approved by the Wisconsin Department of Natural Resources shall be rezoned to the C-1 Conservancy District.
8. The petitioner shall submit a private driveway easement agreement to provide access for the property to the north.

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

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 the provisions of this Ordinance are hereby repealed.

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

**DATE:** July 2, 2009

**FILE NO:** SCZ-0819B

**OWNER:** James Derrick  
Sunset Genesee LLC.  
21401 W. Orchard Dr.  
New Berlin, Wisconsin 53146

**TAX KEY NO:** GNT 1487.999.005, GNT 1487.996, and GNT 1487.997

**LOCATION:**

GNT 1487.999.005: Lot 3A, Certified Survey Map No. 8403, located in part of the SW ¼ and part of the SE ¼ of Section 12, T6N, R18E, Town of Genesee. More specifically, the property is located just north of the intersection of C.T.H. "DE" and the Wisconsin and Southern Railroad right-of-way, containing approximately 15.72 acres.

GNT 1487.996: Part of the SW ¼ of Section 12, T6N, R18E, Town of Genesee, containing approximately 0.44 acres.

GNT 1487.997: Part of the E ½ of the SW ¼ of Section 12, T6N, R18E, Town of Genesee, containing approximately 0.85 acres.

**PRESENT ZONING:**

Conditional B-3 General Business, A-2 Rural Home, A-B Agricultural Business and A-E Exclusive Agricultural Conservancy Districts.

**PRESENT LAND USE:**

The existing buildings on site are rented out for auto body repair and painting, electrical contractor's office with storage for supplies and equipment, a custom cabinetry workshop and residential uses.

**PROPOSED ZONING:** Conditional B-3 General Business and C-1 Conservancy Districts.

**PUBLIC HEARING DATE:** May 27, 2009.

**PUBLIC REACTION:** None.

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

On May 27, 2009, the Town Plan Commission approved the proposed request subject to conditions. On June 8, 2009, the Town Board approved the proposed request subject to the conditions imposed by the Town Plan Commission. The Town Board's Certified Resolution (09-9R), which includes the conditions of approval, is attached as Exhibit "A".

**CONFORMANCE WITH THE TOWN OF GENESEE LAND USE PLAN AND THE COMPREHENSIVE DEVELOPMENT PLAN FOR WAUKESHA COUNTY:**

The property was recently designated as Commercial and Other Open Lands to be Preserved on the Town of Genesee Land Use Plan and the Comprehensive Development Plan for Waukesha County. The proposed uses conform to both plans.

**STAFF ANALYSIS:**

**History:** A portion of Lot 3A, Certified Survey Map No. 8403 has been operating under a Conditional Rezone since 1987 with various businesses utilizing the property over time. The surrounding properties are primarily rural residential lots and there is a town park located directly east of the subject property. An amendment to the conditions of the rezone was made in 2008 to include mini storage. The conditions of the amended rezone approved in 2008 are as follows:

1. The businesses permitted on the 9.1-acre parcel shall be limited to metal fabricating in conjunction with equipment repairs, welding, engine repairs, equipment painting, grain storage and drying. The above specified uses are those uses which presently exist on the property. In addition, the petitioner shall be allowed to have mini-storage facilities on the property.
2. A Deed Restriction shall be recorded in the Waukesha County Register of Deeds within six (6) months of passage of this Ordinance by the County Board of Supervisors stating that the rights granted herein are only transferable to any subsequent owner of the property upon approval of the Town of Genesee Board. Proof of filing shall be submitted to the Town Clerk prior to this Ordinance becoming effective.
3. A determination of non-compliance with the above requirements will necessitate the reversion of this conditional zoning designation to A-B Agricultural Business District with an A-O Agricultural Overlay District following due notice and public hearing.
4. This rezoning shall not be effective until such time as the Waukesha County Land Use Plan is amended from the Rural Residential Density designation to the Commercial designation as is proposed.

Later, the County received a complaint that businesses were operating without Site Plan/Plan of Operation Permits and that the businesses did not comply with the conditions of the zoning. The existing businesses are **Simons Electrical System**, an electrical contractor's office with storage of electrical supplies and equipment; **Pebble Creek Craftsman LLC**, a custom cabinetry workspace including construction, water-based finishing and installation of the cabinets in single-family homes; and **Extreme Painting Auto Body Works**, a part-time auto body workshop with usually only two vehicles to be serviced at any one time. **Berg Painting**, a metal machine parts painting business has recently left the property.

Upon notification of the existing violations on the property and with direction from the Planning and Zoning Division Staff, the petitioner applied to amend the conditions of the zoning on the property to allow the existing and possible future uses. In addition, the petitioner is proposing to zone adjacent lands that he owns as B-3 General Business.

**Proposal:** The petitioner is currently proposing to amend the conditions of the existing zoning of B-3 General Business District on Lot 3A, CSM 8403, and amend the zoning of the remaining parcel from the A-2 Rural Home and the A-B Agricultural Business Districts to the Conditional B-3 General Business District. The petitioner proposed that the A-E Exclusive Agricultural Conservancy District lands remain as is. Since these lands are not used for agricultural production, the County recommends the zoning be amended to the C-1 Conservancy District. Additionally, the wetland area was recently delineated and approved by the Wisconsin Department of Natural Resources. The C-1 Conservancy District zoning should be amended to cover all lands officially delineated as wetland, which is much larger than what is identified as A-E Exclusive Agricultural Conservancy District on the Zoning Maps. The petitioner understands that all lands delineated as wetland are required to be protected and will be rezoned through this process.

The petitioner is also proposing to amend the zoning on a 0.84 acre parcel (western parcel) and a 0.44 acre parcel (eastern parcel) along C.T.H. "DE" from the A-B Agricultural Business District to the Conditional B-3 General Business District. The 0.84 acre parcel currently contains a single-family residence and the 0.44 acre parcel contains a two (2)-family residence. There is also a two (2)-family residence on the larger parcel, known as Lot 3A, CSM 8403.

The petitioner is specifically proposing that all of his three (3) parcels, with the exception of the wetland area, be allowed to operate under a revised Conditional B-3 General Business District zoning. The petitioner would like Condition No. 1 of the existing zoning to be amended to allow the existing approved uses and the repair and service shop for automobiles, motorcycles, lawnmowers and other small engines; garages for the storage of vehicles used in the operation of a permanent business; cabinet and furniture construction and assembly; contractor's office; indoor storage associated with an office use; professional offices and studios; and other similar uses as may be allowed by the Town Plan Commission and Zoning Administrator. At the public hearing, it was recommended that the petitioner include warehouses associated with the approved uses and woodworking. These additional uses would allow the existing uses to remain and would allow for flexibility in future uses proposed by tenants.

The petitioner is proposing to remove the two (2) duplexes within five (5) years and combine all three (3) lots into one (1) lot by Certified Survey Map at such time a mini-storage facility is proposed on Lot 3A, CSM No. 8403 and extending into the existing 0.44 acre lot. The single-family residence would remain on the property.

The Waukesha County Environmental Health Division has informed our office that the businesses are served by an illegally installed holding tank near the mobile home. The tank is not properly coated. A sanitary permit for a new holding tank will be required prior to the approval of any of the existing or proposed uses. There is also a sink in the barn discharging to an unknown point and two (2) other sinks illegally plumbed. The petitioner mentioned that two (2) of the sinks have been removed and the remaining sink will be plumbed into the holding tank.

The existing conventional private sewage systems serving the duplexes and single-family residence are close to failure. If any of the septic systems fail, they will need to be replaced with code compliant systems. Without complete soil tests, the Environmental Health Division can not guarantee what type of system will be suitable in the future.

**STAFF RECOMMENDATION:**

The Planning and Zoning Division Staff recommends approval of the amendment to the conditions of the previous rezoning and the amendment to the zoning on the remaining lands owned by the petitioner, subject to the following conditions:

1. The businesses permitted on the subject parcels shall be limited to the repair and service shop for automobiles, motorcycles, lawn mowers, and other small engines; garages for the storage of vehicles used in conjunction with the operation of a permitted business; cabinet and furniture construction and assembly (woodworking); contractor's offices and associated warehouses; indoor storage associated with an office use; professional offices and studios; light assembly as deemed appropriate by the Town Plan Commission and Waukesha County Zoning Administrator; metal fabricating in conjunction with equipment repairs, welding, engine repairs, equipment painting, mini-storage facilities and any other similar use as may be allowed by the Town Plan Commission and Waukesha County Zoning Administrator.

2. A Deed Restriction shall be recorded in the Waukesha County Register of Deeds Office within six (6) months of passage of this Ordinance by the County Board of Supervisors stating that the rights granted herein are only transferable to any subsequent owner of the property upon approval of the Town of Genesee Board. Proof of filing shall be submitted to the Town Clerk and the Waukesha County Zoning Administrator prior to this Ordinance becoming effective. The legal description on the deed must accurately reflect the lands subject to this approval.
3. If any of the approved uses become a nuisance to the surrounding neighborhood or are detrimental to the natural resources, the Town and County Plan Commissions may proceed with the termination of the affecting uses in accordance with the provisions set forth in the Waukesha County Zoning Code and Waukesha County Shoreland and Floodland Protection Ordinance.
4. Prior to any of the existing uses being legalized, Site Plan and Plan of Operation Permits must be granted and all Environmental Health Division concerns must be addressed.
5. Any outdoor storage on the property must be specifically approved through the Site Plan/Plan of Operation process.
6. The existing duplexes must be removed within five (5) years of the effective date of this ordinance, as the multi-family residential use does not comply with the B-3 General Business District standards.
7. All areas delineated as wetland and approved by the Wisconsin Department of Natural Resources shall be rezoned to the C-1 Conservancy District.
8. The petitioner shall submit a private driveway easement agreement to provide access for the property to the north.

The proposed rezoning, with the conditions recommended above, will result in uses that conform to the Town of Genesee Land Use Plan and the Comprehensive Development Plan for Waukesha, and will allow the continued commercial use of the property with additional flexibility for future tenants.

Respectfully submitted,

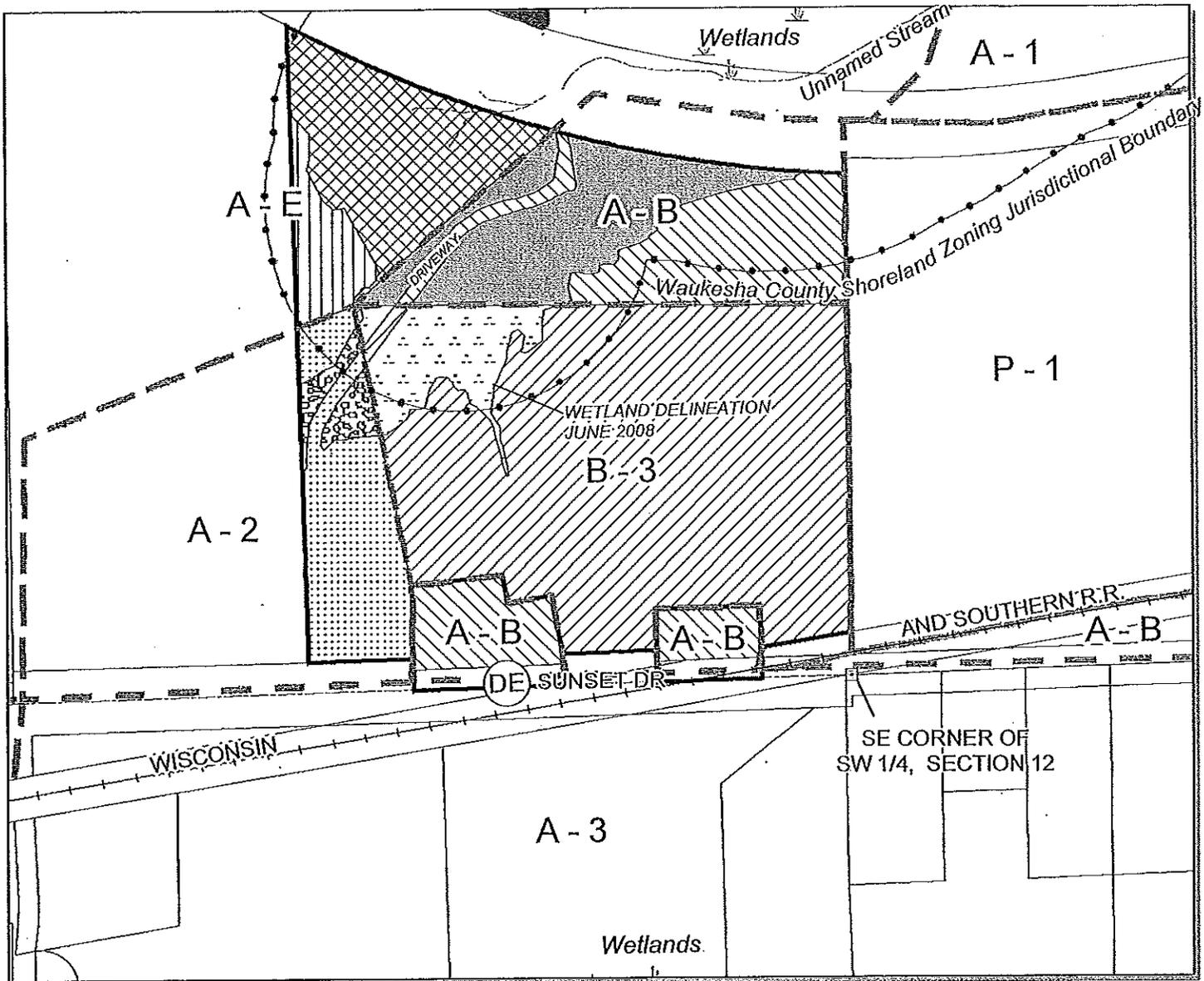


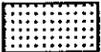
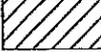
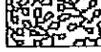
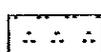
Amy A. Barrows  
Senior Land Use Specialist

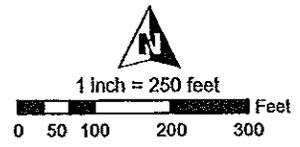
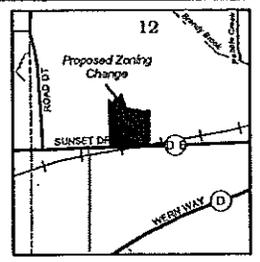
Attachment: Exhibit "A" and Map

# ZONING MAP AMENDMENT

PART OF THE SW 1/4 OF SECTION 12  
TOWN OF GENESEE



-  CONDITIONAL COUNTY ZONING CHANGE FROM A-2 RURAL HOME TO B-3 GENERAL BUSINESS DISTRICT (0.16 AC)
-  CONDITIONAL COUNTY ZONING CHANGE FROM A-B AGRICULTURAL BUSINESS TO B-3 GENERAL BUSINESS DISTRICT (2.65 AC)
-  CONDITIONAL COUNTY ZONING CHANGE FROM A-E EXCLUSIVE AGRICULTURAL CONSERVANCY DISTRICT TO B-3 GENERAL BUSINESS DISTRICT (0.52 AC)
-  AMEND CONDITIONS OF B-3 GENERAL BUSINESS DISTRICT (7.41 AC)
-  CONDITIONAL COUNTY ZONING CHANGE FROM A-2 RURAL HOME TO C-1 CONSERVANCY DISTRICT (0.27 AC)
-  CONDITIONAL COUNTY ZONING CHANGE FROM A-B AGRICULTURAL BUSINESS TO C-1 CONSERVANCY DISTRICT (1.76 AC)
-  CONDITIONAL COUNTY ZONING CHANGE FROM A-E EXCLUSIVE AGRICULTURAL CONSERVANCY DISTRICT TO C-1 CONSERVANCY DISTRICT (1.81 AC)
-  CONDITIONAL COUNTY ZONING CHANGE FROM B-3 GENERAL BUSINESS DISTRICT TO C-1 CONSERVANCY DISTRICT (0.83 AC)



FILE.....SCZ-819B  
 DATE.....07/02/09  
 AREA OF CHANGE.....15.41 ACRES  
 TAX KEY NUMBERS....GNT 1487.996, .997, .999.005

**EXHIBIT "A"**

CERTIFICATION

This is to certify that the  
attached is a true and accurate copy  
of Resolution 09-9R

Zoning Amendment request of  
James Derrick  
GNT1487.999.005  
GNT1487.996  
GNT1487.997

Passed and adopted by the Town Board of the Town of Genesee,  
Waukesha County, Wisconsin on the  
8<sup>th</sup> Day of June, 2009

*Barbara A. Whitmore*  
Barbara A. Whitmore, WCMC  
Clerk  
Town of Genesee

Subscribed and sworn to before me  
this 11<sup>th</sup> day of June, 2009.

*Christine Griedlein*  
Notary Public, State of Wisconsin  
My commission expires on: 12-16-2012

RECEIVED

JUN 13 2009

DEPT OF PARKS & LAND USE

164-0-028

RESOLUTION 09-9R  
TOWN BOARD OF THE TOWN OF GENESEE  
A Municipal Corporation

RECEIVED  
JUN 12 2009  
DEPT OF PARKS & LAND USE

WHEREAS, a Zoning Amendment request was filed by James Derrick to amend the Town of Genesee District Zoning Map of the Waukesha County Zoning Code from the A-2 Rural Home and A-B Agricultural Business Districts to a conditional B-3 General Business District, on the following described properties:

GNT 1487.999.005: Lot 3A, Certified Survey Map No. 8403, being a part of the SW ¼ and SE ¼ of Section 12, T6N, R18E, Town of Genesee, containing approximately 15.72 acres;

GNT 1487.996: Being a part of the SW ¼ of Section 12, T6N, R18E, Town of Genesee, containing approximately 0.44 acres; and

GNT 1487.997: Being a part of the E ½ of the SW ¼ of Section 12, T6N, R18E, Town of Genesee, containing approximately 0.85 acres.

In addition the petitioner is proposing to amend the previously imposed conditions of Enrolled Ordinance 163-22 to allow repair and service shops for automobiles, motor cycles, lawn mowers and other small engines; garages for storage of vehicles used in conjunction with the operation of a permitted business; cabinet and furniture construction and assembly (wood working); contractor's offices and warehouse; indoor storage associated with an office use; professional offices and studios; light assembly; metal fabricating in conjunction with equipment repairs; welding; engine repairs; equipment painting; mini-warehouse/ storage buildings and any other similar use as may be allowed by the Town Plan Commission and the Zoning Administrator.

WHEREAS, A Joint Public Hearing was held by the Town of Genesee Plan Commission and the Waukesha County Department of Parks and Land Use on May 27, 2009 at the Genesee Town Hall located at S43 W31391 Highway 83 Genesee Depot, Wisconsin to consider said request:  
and

WHEREAS, the Town of Genesee Plan Commission held a public meeting to discuss said request. After discussion in regards to said request, by motion, properly made and seconded, the Genesee Town Plan Commission voted to recommend to the Town Board an approval of the request.

WHEREAS, the Genesee Town Board held a public meeting on Monday, June 8, 2009 to discuss said request. BASED UPON THE SAME:

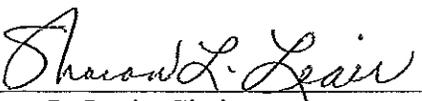
IT IS HEREBY RESOLVED BY THE TOWN BOARD OF THE TOWN OF GENESEE, it being the Town affected by said proposed zoning amendment, THAT, the request for the petitioner be approved subject to the following conditions:

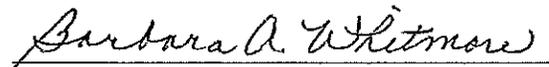
1. The businesses permitted on the above described properties shall be repair and service shops for automobiles, motor cycles, lawn mowers and other small engines; garages for storage of vehicles used in conjunction with the operation of a permitted business; cabinet and furniture construction and assembly (wood working); contractor's offices and warehouse; indoor storage associated with an office use; professional offices and studios; light assembly; metal fabricating in conjunction with equipment repairs; welding; engine repairs; and equipment painting; mini-storage facilities and any other similar use as may be allowed by the Town plan Commission and Zoning Administrator.
2. A Deed Restriction shall be recorded in the Waukesha County Register of Deeds Office within six (6) months of passage of this Ordinance by the County Board of Supervisors stating that the rights granted herein are only transferable to any subsequent owner of the property upon approval of the Town Genesee Board. Proof of filing shall be submitted to the Town Clerk prior to this Ordinance becoming Effective.

AND FURTHER BE IT RESOLVED;

BY THE TOWN BOARD OF THE TOWN OF GENESEE, that the Town of Genesee does hereby give notice to the County that it approves the zoning amendment request of James Derrick

Dated this 8<sup>th</sup> day of June, 2009

  
Sharon L. Leair, Chairman

  
Barbara A. Whitmore, Town Clerk

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-07/28/09

(ORD) NUMBER-1640028

- 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.....
- 22 P. GUNDRUM.....AYE
- 24 W. KOLB.....AYE

TOTAL AYES-23

TOTAL NAYS-00

CARRIED   X  

DEFEATED       

UNANIMOUS   X  

TOTAL VOTES-23