

ENROLLED ORDINANCE 167-77

AMEND THE DISTRICT ZONING MAP OF THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE AND THE WAUKESHA COUNTY ZONING CODE FOR THE TOWN OF VERNON BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE SE ¼ AND SW ¼ OF SECTION 19 AND PART OF THE NE ¼ AND NW ¼ OF SECTION 30, T5N, R19E, TOWN OF VERNON, WAUKESHA COUNTY, WISCONSIN, FROM THE RRD-5 RURAL RESIDENTIAL DENSITY – 5 ACRE AND A-2 RURAL HOME DISTRICTS TO THE A-B AGRICULTURAL BUSINESS DISTRICT (SCZ-1745)

WHEREAS after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Vernon Town Board on December 6, 2012, and

WHEREAS the matter was referred to and considered by the Waukesha County Park and Planning Commission which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.61, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Waukesha County Shoreland and Floodland Protection Ordinance adopted on June 23, 1970, for the Town of Vernon, Waukesha County, Wisconsin, and the Waukesha County Zoning Code adopted by the Waukesha County Board of Supervisors, on February 26, 1959, are amended to conditionally rezone certain lands located in part of the SE ¼ and SW ¼ of Section 19 and part of the NE ¼ and NW ¼ of Section 30, T5N, R19E Town of Vernon, Waukesha County, Wisconsin from the RRD-5 Rural Residential Density – 5 Acre and A-2 Rural Home Districts to the A-B Agricultural Business District, 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-1745, subject to the following conditions.

1. Subject to the petitioner applying for and receiving Town approval of a Smart Growth Comprehensive Plan text amendment allowing the continuation of agricultural and agricultural business uses to continue in the rural residential areas of the Town of Vernon, prior to the rezoning being effective. The Town reserves for itself, and for all of its boards and commissions, full authority to consider such possible text amendment pursuant to all applicable procedures. Nothing herein shall be interpreted as a waiver of any such rights, or as vesting any rights in the Petitioner related to the same.
2. Subject to the petitioner complying with the provisions of Section 6.2 (Agricultural Business District) of the Waukesha County Zoning Code, except with regard to offsets for existing nonconforming structures, which shall be considered legal nonconforming.
3. Compliance Letter. Prior to the issuance of a Zoning Permit, written documentation from the Town Planner, verifying all applicable conditions of the Town Plan Commission approval have been met, must be submitted to the Staff of Waukesha County Department of Parks and Land Use.
4. Petitioner Agreement. As a condition precedent to the issuance of a Zoning Permit, the petitioner is required to accept the terms and conditions of the same in its entirety in

writing.

5. **Town Attorney Review.** The Town of Vernon Plan Commission's recommendation shall not be in full force and effect until such time that the Town Attorney has reviewed the conditions and placed them in final form.
6. **Professional Fees.** Petitioner shall, on demand, reimburse the Town of Vernon for all costs and expenses of any type that the Town of Vernon incurs in connection with this approval, including the cost of professional services incurred by the Town of Vernon (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, as well as to enforce the conditions in this approval due to a violation of these conditions. This condition is enforceable by the Town of Vernon only.
7. **Payment of Charges.** Any unpaid bills owed to the Town of Vernon by the Subject Property Owner and/or Agent, 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 of Vernon; shall be placed upon the tax roll for the Subject Property if not paid within thirty (30) days of the billing by the Town of Vernon, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Town of Vernon, including possible cause for termination of the conditional approval. This condition is enforceable by the Town of Vernon only.
8. Prior to this rezoning being effective, a Declaration of Restrictions shall be recorded in the Waukesha County Register of Deeds Office which states that the two southern parcels (VNT 2134.999.002 and VNT 2134.999.004) identified as part of this request shall not be sold separately.

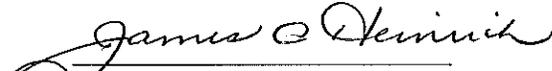
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Vernon.

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.

AMEND THE DISTRICT ZONING MAP OF THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE AND THE WAUKESHA COUNTY ZONING CODE FOR THE TOWN OF VERNON BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE SE ¼ AND SW ¼ OF SECTION 19 AND PART OF THE NE ¼ AND NW ¼ OF SECTION 30, T5N, R19E, TOWN OF VERNON, WAUKESHA COUNTY, WISCONSIN, FROM THE RRD-5 RURAL RESIDENTIAL DENSITY - 5 ACRE AND A-2 RURAL HOME DISTRICTS TO THE A-B AGRICULTURAL BUSINESS DISTRICT (SCZ-1745)

Presented by:  
Land Use, Parks, and Environment Committee

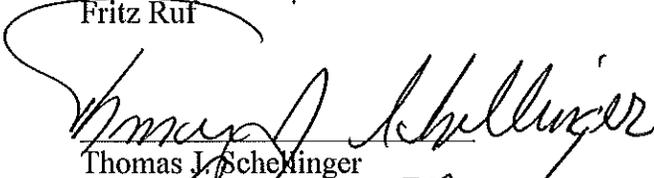
  
James A. Heinrich, Chair

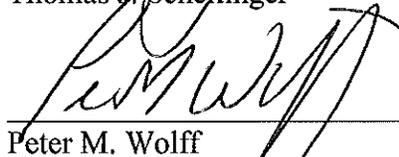
{ Absent }  
Jim Batzko

  
Walter L. Kolb

  
Pamela Meyer

{ Absent }  
Fritz Ruf

  
Thomas J. Schellinger

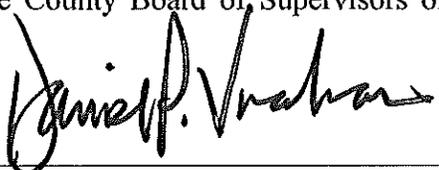
  
Peter M. Wolff

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

Date: 2/26/2013,   
Kathy Nikolaus, County Clerk

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

Approved: X  
Vetoed: \_\_\_\_\_  
Date: 3-11-13

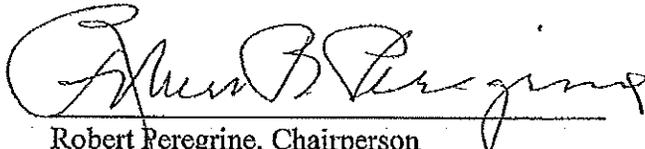
  
Daniel P. Vrakas, County Executive

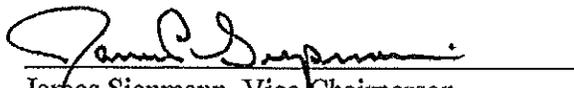
COMMISSION ACTION

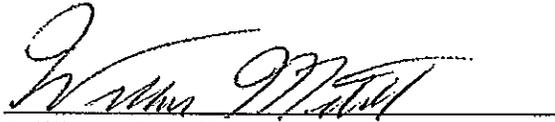
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Waukesha County Shoreland and Floodland Protection Ordinance hereby recommends approval of (SCZ-1745 P&F Investments, LLC/Edgewood Greenhouse Inc.) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

January 17, 2013

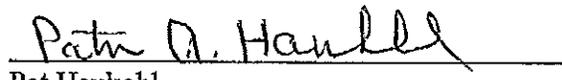
  
Robert Peregrine, Chairperson

  
James Siepmann, Vice Chairperson

  
William Mitchell

  
Gary Goodchild

  
Walter Kolb

  
Pat Haukohl

  
Fritz Ruf

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

**DATE:** January 17, 2013

**FILE NO:** SCZ-1745

**OWNER:** P & F Investments LLC  
c/o Chris Peterson  
S94 W27495 Edgewood Avenue  
Mukwonago, WI 53149

**TAX KEY NO:** VNT 2134.999.002, VNT 2092.997, VNT 2133.999.004

**LOCATION:**

Part of the SE ¼ and SW ¼ of Section 19, and part of the NE ¼ and NW ¼ of Section 30, T5N, R19E, Town of Vernon. More specifically, the properties are located on the south side of Edgewood Avenue with frontage on the Fox River and together contain approximately 22.8 acres of land.

**PRESENT ZONING:**

RRD-5 Rural Residential Density – 5 Acre District, A-2 Rural Home District, A-E Exclusive Agricultural District and C-1 Conservancy District.

**PRESENT LAND USE:**

The property contains a single-family residence as well as Edgewood Greenhouse, Inc., a wholesale nursery operation.

**PROPOSED ZONING:**

A-B Agricultural Business District. The areas zoned A-E Exclusive Agricultural and C-1 Conservancy will not change.

**PUBLIC HEARING DATE:** December 6, 2012.

**PUBLIC REACTION:** None.

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

At their meeting on December 6, 2012, the Town of Vernon Plan Commission and the Town of Vernon Board approved this request subject to a number of conditions, see attached Exhibit "A." The Town of Vernon Planner has submitted documentation that the petitioner has satisfied the Town's conditions.

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

This property is designated as Rural Density and Other Agricultural Land and Other Open Lands to be Preserved on the Comprehensive Development Plan for Waukesha County (CDPWC). The Rural Density

and Other Agricultural Land designation is defined in the CDPWC as land that consists primarily of farm and related open lands which do not meet the criteria for classification as prime agricultural lands, but which are nonetheless proposed to be retained in rural land uses. Rural land uses including continuation of existing farming activity, creation of smaller farms, including hobby farms, horse farms, or other specialty farms and rural density residential development. The Other Open Lands to be Preserved designation is defined as lands usually adjacent to, but outside of identified primary or secondary environmental corridors and isolated natural resource areas, including lands within the 100-year floodplain and other lands covered by soils with a high water table, poorly drained soils, or organic soils.

The property is designated as Rural Residential – 5 acre and Environmentally Sensitive Area on the Town of Vernon Land Use Plan. It should be noted that the Town recently approved a text amendment to their Land Use Plan to allow rural land uses similar to those provided for in the County's Rural Density and Other Agricultural Land designation.

The proposed continued operation of a wholesale nursery operation is consistent with both plans.

**STAFF ANALYSIS:**

The Edgewood Greenhouse Inc. operation has existed on the site for approximately 40 years and has expanded over time. The site is bounded on the south by the Fox River, on the southeast by I-43, on the west by an outlot in the Fox River View subdivision in the Village of Mukwonago which contains a storm water facility and Edgewood Avenue on the north. There are areas of floodplain and wetland associated with the Fox River on the southeast and west sides of the property.

The existing operation is a wholesale facility for varied flowers and foliage plants for retailers, interior contractors and landscapers. The site consists of three properties as described above and contains a single-family residence in which the operator resides, a detached garage, a main warehouse building and multiple greenhouse structures. The structures that currently exist on the site exceed the floor area ratio requirements of the RRD-5 Zoning District but are considered legal nonconforming relative to floor area ratio as greenhouses had not historically been counted in floor area ratio calculations.

It should be noted that based on aerial photos of the property, there are several greenhouse structures that are located on the southeast portion of the site that appear to have been constructed since 2007 and are located within the mapped FEMA floodplain and may be located within 75 ft. of a wetland area. These structures are in violation of the Waukesha County Shoreland and Floodland Protection Ordinance and resolution of the violation is being pursued as another matter.

The petitioner is proposing to construct a 76 ft. wide by 45 ft. long addition to the existing warehouse building on site and a new 63 ft. wide by 156 ft. long greenhouse is proposed on the northwest side of the site. The proposed addition to the warehouse building will be used for the loading and unloading of flowers and foliage plants as well as for equipment storage. The proposed greenhouse will be used for the propagation of plants similar to the other greenhouses on site.

The proposed warehouse building addition and greenhouse structure must be located a minimum of 75 ft. from floodplain and/or wetland areas and must be located a minimum of 20 ft. from the side lot lines. Since the property currently exceeds the floor area ratio requirements of the Ordinance, the proposed building and greenhouse would not comply with the floor area ratio requirements without a rezone. Therefore, the petitioner is requesting to rezone the property to the A-B Agricultural Business District, which would allow a maximum floor area ratio of 50% and the continued operation of the nursery business.

It should be noted that a Site Plan/Plan of Operation for the greenhouse and warehouse addition have been reviewed and approved subject to the approval of the zoning change or the granting of a variance to exceed the floor area ratio requirements.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that this request be **approved** in accordance with the Town's decisions as modified below (modifications to the Town conditions are in **bold**):

1. Subject to the petitioner applying for and receiving Town approval of a Smart Growth Comprehensive Plan text amendment allowing the continuation of agricultural and agricultural business uses to continue in the rural residential areas of the Town of Vernon, prior to the rezoning being effective. The Town reserves for itself, and for all of its boards and commissions, full authority to consider such possible text amendment pursuant to all applicable procedures. Nothing herein shall be interpreted as a waiver of any such rights, or as vesting any rights in the Petitioner related to the same. (*Note: the text amendment reference herein as been approved.*)
2. Subject to the petitioner complying with the provisions of Section 6.2 (Agricultural Business District) of the Waukesha County Zoning Code, except with regard to offsets for existing nonconforming structures, which shall be considered legal nonconforming.
3. Compliance Letter. Prior to the issuance of a Zoning Permit, written documentation from the Town Planner, verifying all applicable conditions of the Town Plan Commission approval have been met, must be submitted to the Staff of Waukesha County Department of Parks and Land Use. (*Note: the compliance letter has been received from the Town Planner.*)
4. Petitioner Agreement. As a condition precedent to the issuance of a Zoning Permit, the petitioner is required to accept the terms and conditions of the same in its entirety in writing. (*Note: the petitioner has submitted acceptance of the Town's conditions, however, written acceptance of the final County conditions will need to be submitted.*)
5. Town Attorney Review. The Town of Vernon Plan Commission's recommendation shall not be in full force and effect until such time that the Town Attorney has reviewed the conditions and placed them in final form.
6. Professional Fees. Petitioner shall, on demand, reimburse the Town of Vernon for all costs and expenses of any type that the Town of Vernon incurs in connection with this approval, including the cost of professional services incurred by the Town of Vernon (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, as well as to enforce the conditions in this approval due to a violation of these conditions. **This condition is enforceable by the Town of Vernon only.**

7. **Payment of Charges.** Any unpaid bills owed to the Town of Vernon by the Subject Property Owner and/or Agent, 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 of Vernon; shall be placed upon the tax roll for the Subject Property if not paid within thirty (30) days of the billing by the Town of Vernon, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional approval that is subject to all remedies available to the Town of Vernon, including possible cause for termination of the conditional approval. **This condition is enforceable by the Town of Vernon only.**
8. **Prior to this rezoning being effective, a Declaration of Restrictions shall be recorded in the Waukesha County Register of Deeds Office which states that the two southern parcels (VNT 2134.999.002 and VNT 2134.999.004) identified as part of this request shall not be sold separately.**

The approval of this request will allow the continued operation of a wholesale nursery operation which has existed on the site for approximately 40 years and will allow the construction of the proposed greenhouse and warehouse addition. The proposed use of the property is consistent with the Town and County Comprehensive Development Plans. Furthermore, the use will be compatible with immediate surrounding land uses and the Site Plan/Plan of Operation review will control the specific activities on the site as related to parking, lighting, noise, hours of operation, signage, etc.

Respectfully submitted,



Peggy Tilley  
Senior Land Use Specialist

cc: Exhibit "A"  
Map



EXHIBIT "A"

Lincoln Center II • 2514 South 102<sup>nd</sup> Street, Suite 278  
West Allis, WI 53227  
(414) 336-7900 • Fax: (414) 336-7901  
www.foth.com

December 20, 2012

Ms. Peggy Tilley  
Senior Land Use Specialist  
Waukesha County  
515 West Moreland Boulevard  
Waukesha, WI 53188

RECEIVED

DEC 20 2012

DEPT OF PARKS & LAND USE

Dear Ms. Tilley:

RE: P&F Investments LLC – Rezone

Please be advised that the Town of Vernon Plan Commission and Board approved the Rezone request P&F Investments LLC located at S94W27495 Edgewood Avenue, Mukwonago, WI 53149, subject to the following:

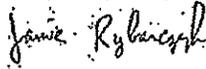
1. Subject to the Petitioner applying for and receiving Town approval of a Smart Growth Comprehensive Plan text amendment allowing the continuation of agricultural and agricultural business uses to continue in the rural residential areas of the Town of Vernon, prior to the rezoning being effective. The Town reserves for itself, and for all of its boards and commissions, full authority to consider such possible text amendment pursuant to all applicable procedures. Nothing herein shall be interpreted as a waiver of any such rights, or as vesting any rights in the Petitioner related to the same.
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Ms. Peggy Tilley  
Waukesha County  
December 20, 2012  
Page 2

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Sincerely,

Foth Infrastructure & Environment, LLC

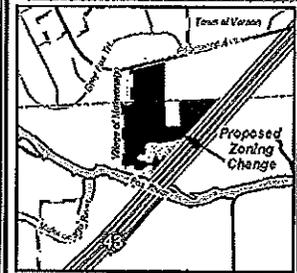
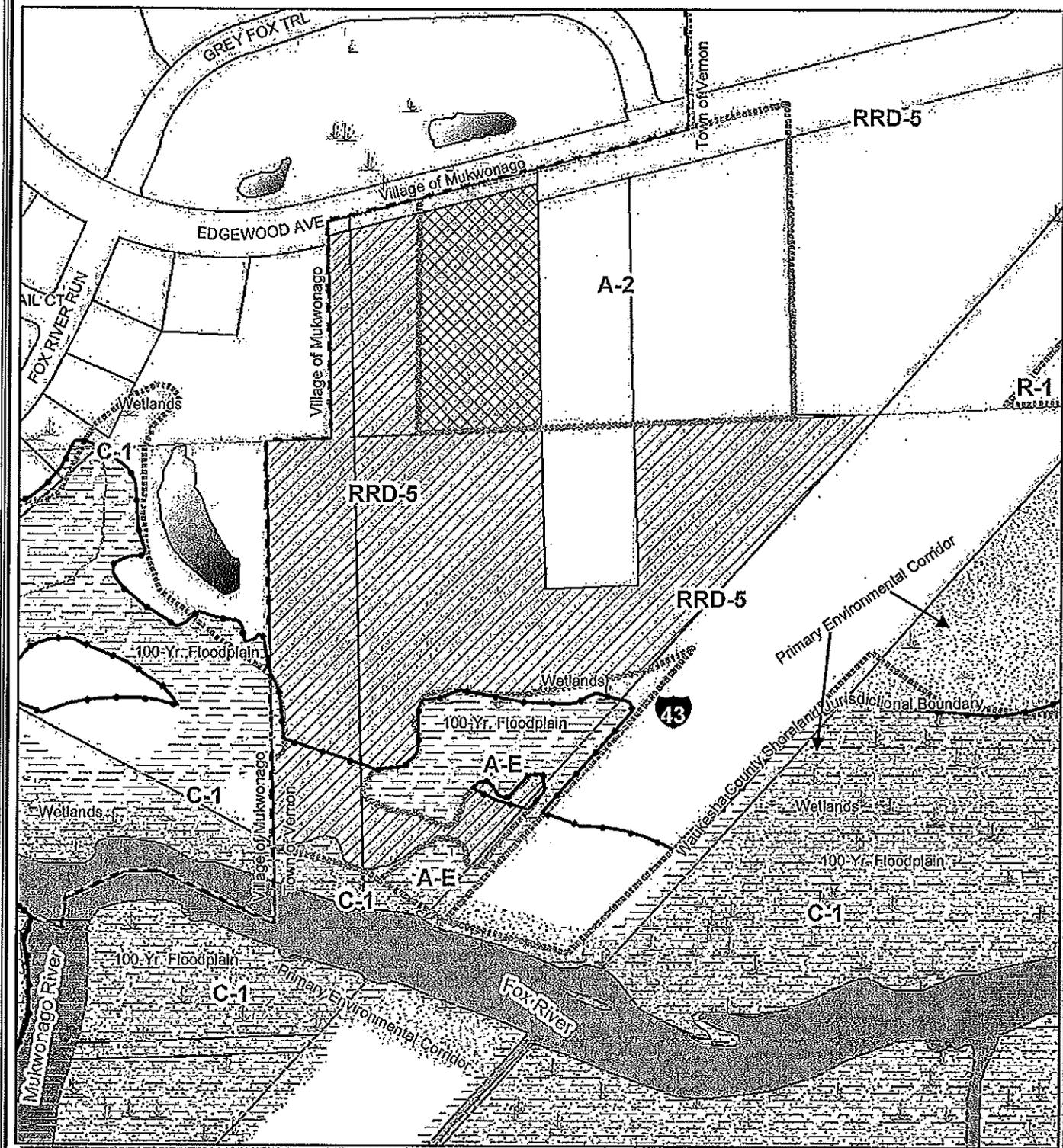


Jamie Rybarczyk  
*Town Planner*

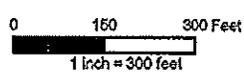
cc: Michael P. Doble, Chairman  
Marie Kumershek, Clerk  
Karen Maderich, Deputy Clerk  
Chris Peterson, Edgewood Greenhouse

# ZONING MAP AMENDMENT

PART OF THE SE & SW 1/4 OF SECTION 19  
TOWN OF VERNON



- COUNTY AND SHORELAND CONDITIONAL ZONING CHANGE FROM RRD-5 RURAL RESIDENTIAL DENSITY DISTRICT 5 TO A-B AGRICULTURAL BUSINESS DISTRICT (16.62 AC)
- COUNTY AND SHORELAND CONDITIONAL ZONING CHANGE FROM A-2 RURAL HOME DISTRICT TO A-B AGRICULTURAL BUSINESS DISTRICT (3.02 AC)



Prepared by the Waushara County Department of Parks and Land Use



FILE.....SCZ-1745  
 DATE.....11/7/13  
 AREA OF CHANGE.....19.64 ACRES  
 TAX KEY NUMBER.....VNT 2134.999.002,  
 VNT 2092.897, & VNT 2133.999.004

167-0-077

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-02/26/13

(ORD) NUMBER-1670077

1 C. SLATTERY.....AYE  
3 R. MORRIS.....AYE  
5 J. BRANDTJEN.....AYE  
7 J. GRANT.....AYE  
9 J. HEINRICH.....AYE  
11 F. RUF.....  
13 P. DECKER.....AYE  
15 W. KOLB.....AYE  
17 D. PAULSON.....AYE  
19 C. CUMMINGS.....  
21 W. ZABOROWSKI.....AYE  
23 K. HAMMITT.....AYE  
25 G. YERKE.....

2 D. FALSTAD.....AYE  
4 J. BATZKO.....AYE  
6 J. JESKEWITZ.....AYE  
8 P. HAUKOHL.....AYE  
10 D. SWAN.....AYE  
12 P. WOLFF.....AYE  
14 P. MEYER.....  
16 M. CROWLEY.....AYE  
18 L. NELSON.....AYE  
20 T. SCHELLINGER...AYE  
22 P. JASKE.....AYE  
24 D. DRAEGER.....AYE

TOTAL AYES-21

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-21