

ENROLLED ORDINANCE 174-033

AMEND THE DISTRICT ZONING MAP OF THE TOWN OF WAUKESHA ZONING CODE BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NW ¼ AND SW ¼ OF SECTION 35, T6N, R19E, TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN, FROM THE R-E SINGLE FAMILY RESIDENCE ESTATE DISTRICT TO THE R-1 SINGLE FAMILY RESIDENCE DISTRICT (RZ41)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Waukesha Town Board on February 14, 2019; 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 60.62, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the District Zoning Map for the Town of Waukesha Zoning Code, adopted by the Town of Waukesha on October 30, 2017, is hereby amended to conditionally rezone from the R-E Single Family Residence Estate District to the R-1 Single Family Residence District, certain lands located in part of the NW ¼ and SW ¼ of Section 35, T6N, R19E, Town of Waukesha, Waukesha County, Wisconsin, 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 RZ41, is hereby approved, subject to the following conditions:

1. The Rezone approval is limited to a total of eight (8) single-family lots for the property, in a layout generally consistent with the conceptual plan presented to the Town of Waukesha Plan Commission on February 14, 2019.
2. The Rezone approval is contingent on Town Board approval of the amendment to Town Comprehensive Development Plan (Smart Growth Plan) Land Use Map from Suburban Density II Residential (3 - 4.9 AC/DU) to Low Density Residential (20,000 SF – 1 AC) for the parcel.
3. The Rezone approval shall not be in full force and effect until approved by the Waukesha County Board of Supervisors, and the Petitioner obtains approval of the Subdivision Plat by the Town of Waukesha Board, Waukesha County Department of Parks and Land Use, and other approving bodies, and records the same with the Waukesha County Register of Deeds.
4. The Petitioner shall provide the Town written approval from ATC for use of lands within the 150' easement for rights-of-way and outlots prior to Subdivision Plan approval.
5. The Petitioner and/or Property Owner shall, on demand, reimburse the Town of Waukesha for all costs and expenses of any type incurred by the Town in connection with the review and approval of this application, including, but not limited to, the cost of professional services incurred by the Town for the review and preparation of required documents, attendance at meetings or other related professional services as well as to


enforce the conditions in this approval due to a violation of these conditions. Additionally, any unpaid bills owed to the Town of Waukesha 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 or forfeitures owed to the Town of Waukesha must be paid on demand and prior to issuance of any permits and 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 Waukesha, 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 Waukesha, including possible cause for termination of the conditional approval.

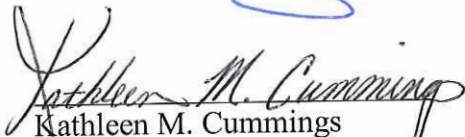
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Waukesha.

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

AMEND THE DISTRICT ZONING MAP OF THE TOWN OF WAUKESHA ZONING CODE BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NW ¼ AND SW ¼ OF SECTION 35, T6N, R19E, TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN, FROM THE R-E SINGLE FAMILY RESIDENCE ESTATE DISTRICT TO THE R-1 SINGLE FAMILY RESIDENCE DISTRICT (RZ41)

Presented by:
Land Use, Parks, and Environment Committee

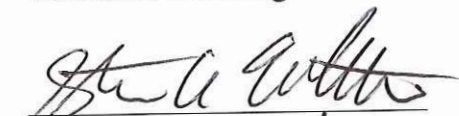

David D. Zimmermann, Chair

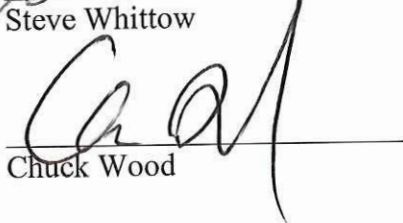

Kathleen M. Cummings

absent
Keith Hammitt



William A. Mitchell

absent
Thomas J. Schellinger


Steve Whittow


Chuck Wood

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

Date: June 27 2019, 
Margaret Wartman, County Clerk

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

Approved: X

Vetoed: _____

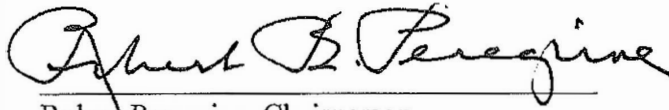
Date: 7/1/19, 
Paul Farrow, County Executive

COMMISSION ACTION

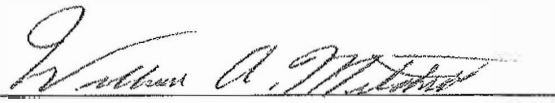
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Waukesha Zoning Code hereby recommends **approval** of RZ41 (Washburn MC Home Builders, LLC) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

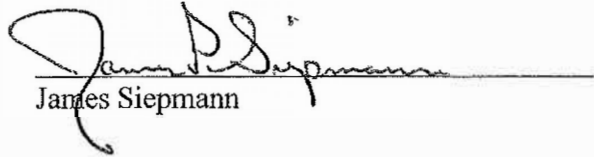
May 16, 2019



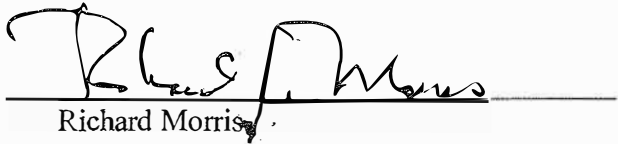
Robert Peregrine, Chairperson



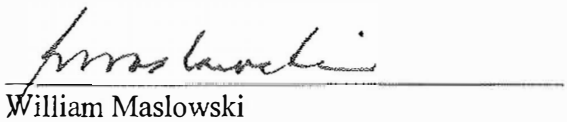
William Mitchell, Vice Chairperson




James Siepmann



Richard Morris



William Maslowski



Thomas Michalski

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

DATE: May 17, 2019

FILE NO.: RZ41

TAX KEY NO.: WAKT 1434.994.002

OWNERS: Nancy Washburn
MC Home Builders, LLC
5008 Green Bay Road, Suite 101
Kenosha, WI 53144-1780

LOCATION:
Part of the NW ¼ and SW ¼ of Section 35, T6N, R19E, Lot 2 of Certified Survey Map No. 9865, Town of Waukesha. More specifically, the property is located east of STH 164 and on the west side of Big Bend Road, containing approximately 16.7 acres.

PRESENT ZONING CLASSIFICATION:
R-E Single Family Residence Estate District with C-1 Conservancy (wetlands) HG High Groundwater District overlays.

PRESENT LAND USE:
Agricultural.

PROPOSED ZONING:
R-1 Single Family Residence District (town) with C-1 Conservancy (wetlands) HG High Groundwater District overlays.

PROPOSED LAND USE:
Eight lot, single-family residential subdivision.

PUBLIC HEARING DATE:
February 14, 2019.

PUBLIC REACTION:
One person expressed concerns with increasing the density of the property and would it set a precedent for other properties in the area.

TOWN PLAN COMMISSION:
On February 14, 2019, the Town Plan Commission, unanimously recommended approval of the rezoning request with conditions.

TOWN BOARD ACTION
On February 14, 2019, the Town Board unanimously approved the rezoning request as conditioned.

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

The county plan designation is Suburban Density II Residential (3-4.9 acres per dwelling unit, conventional, 2.1 acres per dwelling unit, conservation design). The town recently amended its designation for the lands to Low Density Residential (20,000 to one acre per dwelling unit) category because the town plan does not provide for a conservation design bonus similar to the county plan. The proposed density of 2.1 acres per unit complies with both plans and is consistent with the county conservation design bonus in that 40% open space is provided.

OTHER CONSIDERATIONS:

The lands that are proposed to be rezoned are currently cultivated. The rezone would take the property from the R-E District (three-acre minimum) to the R-1 District (one-acre minimum) to allow for an eight-lot subdivision. The proposed concept plan (see Exhibit A) depicts one-acre lots.

An American Transmission Company (ATC) easement traverses the north and central part of the property. Overhead power lines run parallel to the north property line from Big Bend Road west to a transmission tower that provides for the lines as they extend due south from the point of the transmission tower. ATC has advised the town planner that their primary interest is that the elevations near the tower remain unchanged. ATC will complete review and approval of the proposal once a grading plan is submitted to them.

There is a road stub at the north property line that extends to Maplewood Terrace within the abutting subdivision. The proposed subdivision would contain two lots to the east of the extended Elm Tree Lane and six lots to the west of the utility easement. The easement area would be entirely contained within proposed road right of way and open space outlots. There is a wetland area and other poorly drained lands in the northeast corner of the property. The wetlands and most of the poorly drained land would be part of the subdivision open space. Stormwater facilities would be provided in the southwest corner and east part of the property. The property slopes and the westerly proposed lots would be suitable for rear exposed basements.

STAFF RECOMMENDATION

It is the opinion of the Planning and Zoning Division Staff that the request be **approved** subject to the following conditions imposed by the Town:

1. The Rezone approval is limited to a total of eight (8) single-family lots for the property, in a layout generally consistent with the conceptual plan presented to the Town of Waukesha Plan Commission on February 14, 2019.
2. The Rezone approval is contingent on Town Board approval of the amendment to Town Comprehensive Development Plan (Smart Growth Plan) Land Use Map from Suburban Density II Residential (3 - 4.9 AC/DU) to Low Density Residential (20,000 SF – 1 AC) for the parcel.
3. The Rezone approval shall not be in full force and effect until approved by the Waukesha County Board of Supervisors, and the Petitioner obtains approval of the Subdivision Plat by the Town of Waukesha Board, Waukesha County Department of Parks and Land Use, and other approving bodies, and records the same with the Waukesha County Register of Deeds.
4. The Petitioner shall provide the Town written approval from ATC for use of lands within the 150' easement for rights-of-way and outlots prior to Subdivision Plan approval.

5. The Petitioner and/or Property Owner shall, on demand, reimburse the Town of Waukesha for all costs and expenses of any type incurred by the Town in connection with the review and approval of this application, including, but not limited to, the cost of professional services incurred by the Town for the review and preparation of required documents, attendance at meetings or other related professional services as well as to enforce the conditions in this approval due to a violation of these conditions. Additionally, any unpaid bills owed to the Town of Waukesha 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 or forfeitures owed to the Town of Waukesha must be paid on demand and prior to issuance of any permits and 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 Waukesha, 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 Waukesha, including possible cause for termination of the conditional approval.

The approval of the request allows for a conservation design subdivision and one-acre lots, consistent with the subdivision to the north. The design of the concept plan preserves wetlands, most areas of wet soil and overhead utility lines in outlots, which will make the proposed lots more desirable and complies with local and county plan recommendations.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning and Zoning Division Manager

Attachments: Town Ordinance No. 2019-04
Exhibit A
Map

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ORDINANCE NO. 2019-04

TOWN OF WAUKESHA

AN ORDINANCE TO CONDITIONALLY REZONE AND AMEND THE TOWN
OF WAUKESHA ZONING DISTRICT MAP
OF THE TOWN OF WAUKESHA ZONING ORDINANCE
BY PLACING CERTAIN LANDS IN THE TOWN OF WAUKESHA FROM THE
R-E, SINGLE FAMILY RESIDENCE ESTATE
R-1 SINGLE-FAMILY RESIDENCE DISTRICT

RECEIVED

By Department of Parks & Land Use at 9:54 am, May 16, 2019

WHEREAS, a petition has been filed by Nany Washburn agent to MC Homebuilders, LLC, petitioning pursuant to Section 13-2- 22(b) for rezoning property LOT 2 CSM #9965 VOL 93/47 REC AS DOC #3246935 PT NW1/4 & SW1/4 SEC 35 T6N, depicted in attached Exhibits A , attached hereto and incorporated herein by reference (the "Subject Property"); and

WHEREAS, upon receipt of the petition the Town Clerk scheduled a public hearing to be held jointly by the Town Plan Commission and the Town Board February 14, 2019, pursuant to Section 13-2- 22(d); and

WHEREAS, the Town Clerk for the Town of Waukesha has properly transmitted notice to the Town Plan Commission, Town Board, and to the Waukesha County Park and Planning Commission, pursuant to Section 13-2-22(d)(2) of the Town of Waukesha Zoning Code; and

WHEREAS, the Plan Commission considered the testimony taken at the public hearing, along with other pertinent technical information and made a recommendation to the town pursuant to Section 13-2-22(d)(3) of the Town of Waukesha Zoning Code; and

WHEREAS, the Town Board for the Town of Waukesha at the February, 2019 meeting after carefully reviewing the recommendation of the Plan Commission for the Town of Waukesha and having given the matter due consideration having determined that all procedural requirements and notice requirements have been satisfied, and having based its determination on the effect of the adoption of the ordinance on the health, safety, morals, comfort, prosperity and general welfare of the Town of Waukesha of the community and the preservation and enhancement of property values in the community, and having given due consideration to the municipal problems involved hereby determine that the rezoning will serve the public health, safety morals, comfort, prosperity and general welfare of the Town of Waukesha, and that such amendments are intended to provide for adequate light, air, convenience of access, and safety from fire and other dangers; to promote the safety and efficiency of the public streets and highways; to aid in conserving and stabilizing the economic values of the community; to promote the orderly development of land; to preserve and promote the general attractiveness and character of the community environment; to guide the proper distribution and location of population and of the various land uses; and otherwise provide for the healthy and prosperous growth of the community, and that such rezoning will enhance property values in the Town and will not be hazardous, harmful, noxious, offensive or a nuisance and will not unduly limit or restrict the use of property in the Town or for any other reason cause a substantial adverse effect on the property values and general desirability of the Town.

NOW THEREFORE, the Town Board for the Town of Waukesha, Waukesha County does hereby ordain as follows:

SECTION 1: The Subject Property identified by map on Exhibit A and by legal description LOT 2 CSM #9965 VOL 93/47 REC AS DOC #3246935 PT NW1/4 & SW1/4 SEC 35 T6N, both exhibits attached hereto and incorporated herein by reference, are hereby conditionally amended to change the zoning of such property from R-E Single-Residence Estate District to the R-1 Single-Family Residence District, if the conditions stated in Section 2 of this ordinance are met.

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:

1. The Rezone approval is limited to a total of eight (8) single-family lots for the property, in a layout generally consistent with the conceptual plan presented to the Town of Waukesha Plan Commission on February 14, 2019.
2. The Rezone approval is contingent on Town Board approval of the amendment to Town Comprehensive Development Plan (Smart Growth Plan) Land Use Map from Suburban Density II Residential (3 - 4.9 AC/DU) to Low Density Residential (20,000 SF – 1 AC) for the parcel.
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4. The Petitioner shall provide the Town written approval from ATC for use of lands within the 150' easement for rights-of-way and outlots prior to Subdivision Plan approval.
5. The Petitioner and/or Property Owner shall, on demand, reimburse the Town of Waukesha for all costs and expenses of any type incurred by the Town in connection with the review and approval of this application, including, but not limited to, the cost of professional services incurred by the Town for the review and preparation of required documents, attendance at meetings or other related professional services as well as to enforce the conditions in this approval due to a violation of these conditions. Additionally, any unpaid bills owed to the Town of Waukesha 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 or forfeitures owed to the Town of Waukesha must be paid on demand and prior to issuance of any permits and 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 Waukesha, 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 Waukesha, including possible cause for termination of the conditional approval.

SECTION 3. The subject property owner is hereby put on notice that the Town of Waukesha may rezone the lands or portions thereof subject to this conditional rezoning ordinance to R-E Single Family Residence Estate District if the conditions of this ordinance are not fully complied with.

SECTION 4. SEVERABILITY.

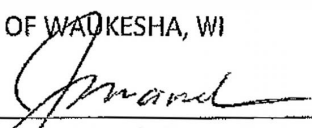
The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a decision of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the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

SECTION 7. 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.

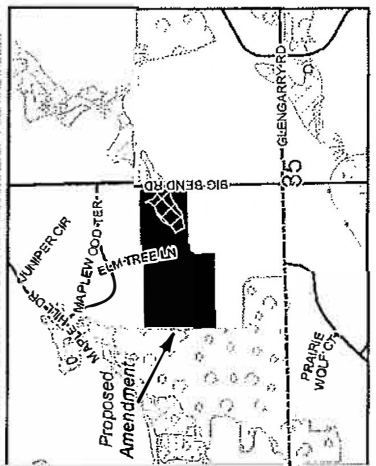
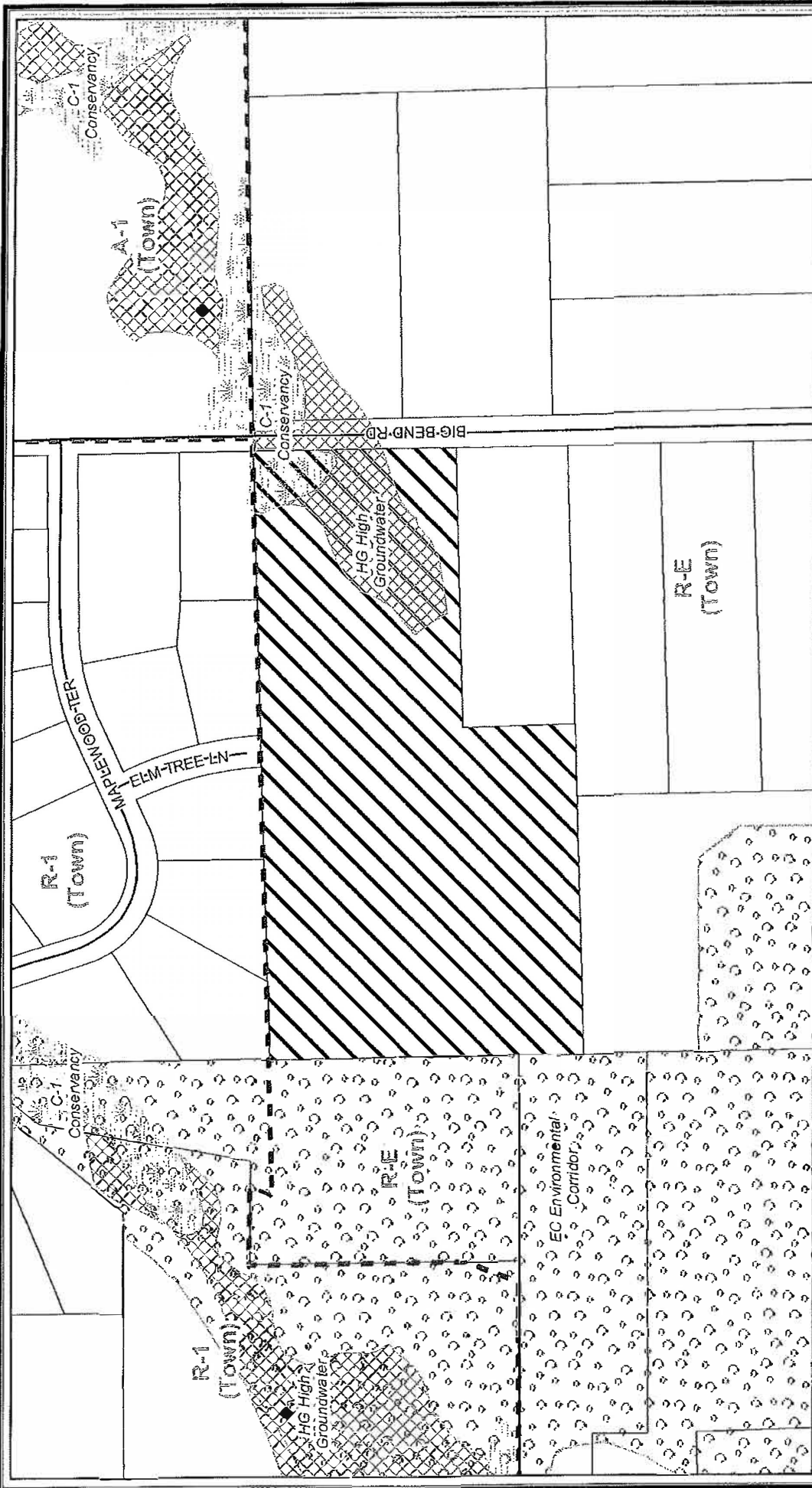
Passed and approved this 14th day of February, 2019.

TOWN OF WAUKESHA, WI

By: 
John Marek, Town Chairman

ATTEST:


Kathy Nickolaus, Town Clerk-Treasurer



CONDITIONAL TOWN ZONING CHANGE FROM R-E SINGLE FAMILY RESIDENTIAL ESTATE DISTRICT TO R-1 RESIDENTIAL DISTRICT

C-1 Conservancy
 HG High Groundwater
 EC Environmental Corridor

FILE.....RZ41
 DATE OF PLAN COMMISSION.....05/16/19
 AREA OF CHANGE.....16.7 ACRES
 TAX KEY NUMBER.....WAKT 1434.994.002

1 inch = 300 feet

0 150 300 Feet

Prepared by the Waukesha County Department of Parks and Land Use

ZONING AMENDMENT

PART OF THE NW AND SW 1/4 SECTION 35 TOWN OF WAUKESHA



Ordinance 174-O-034

VOTE RESULTS: Passed By Majority Vote

AYE: 25 NAY: 0

ABSENT: 0

D1 - Foti	AYE	D14 - Wood	AYE
D2 - Zimmermann	Motion	D15 - Mitchell	Second
D3 - Morris	AYE	D16 - Crowley	AYE
D4 - Batzko	AYE	D17 - Paulson	AYE
D5 - Dondlinger	AYE	D18 - Nelson	AYE
D6 - Walz	AYE	D19 - Cummings	AYE
D7 - Grant	AYE	D20 - Schellinger	AYE
D8 - Michalski	AYE	D21 - Gaughan	AYE
D9 - Heinrich	AYE	D22 - Wysocki	AYE
D10 - Swan	AYE	D23 - Hammitt	AYE
D11 - Howard	AYE	D24 - Whittow	AYE
D12 - Wolff	AYE	D25 - Johnson	AYE
D13 - Decker	AYE		