

ENROLLED ORDINANCE 169-42

AMEND THE DISTRICT ZONING MAP OF THE TOWN OF WAUKESHA ZONING CODE BY REZONING CERTAIN LANDS LOCATED IN PART OF THE SE ¼ OF SECTION 14, T6N, R19E, TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN, FROM THE R-1 SINGLE FAMILY RESIDENCE AND C-1 CONSERVANCY DISTRICTS TO THE P-1 PARK, RECREATION AND PUBLIC AND C-1 CONSERVANCY DISTRICTS (ZT-1764)

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 June 13, 2013, 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 District Zoning Map for the Town of Waukesha Zoning Code, adopted by the Town of Waukesha on June 24, 1979, is hereby amended to rezone from the R-1 Single Family Residence and C-1 Conservancy Districts to the P-1 Park, Recreation and Public and C-1 Conservancy Districts, certain lands located in part of the SE ¼ of Section 14, 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 ZT-1764, is hereby approved.

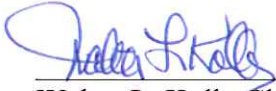
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Waukesha.

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

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ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.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 TOWN OF WAUKESHA ZONING CODE  
BY REZONING CERTAIN LANDS LOCATED IN PART OF THE SE ¼ OF SECTION 14,  
T6N, R19E, TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN,  
FROM THE R-1 SINGLE FAMILY RESIDENCE AND C-1 CONSERVANCY  
DISTRICTS TO THE P-1 PARK, RECREATION AND PUBLIC AND  
C-1 CONSERVANCY DISTRICTS (ZT-1764)

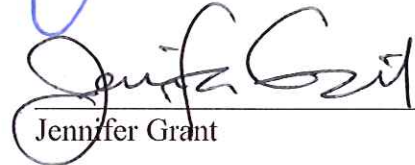
Presented by:  
Land Use, Parks, and Environment Committee



Walter L. Kolb, Chair



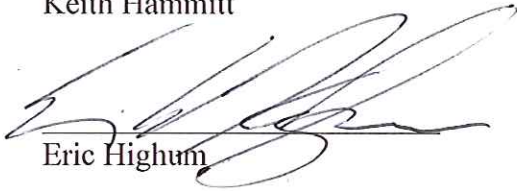
Jim Batzko



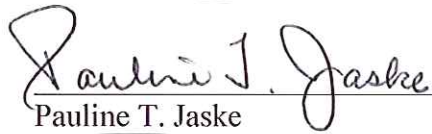
Jennifer Grant

<Absent>

Keith Hammitt



Eric Highum



Pauline T. Jaske




Thomas J. Schellinger

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

Date: 8/26/14,   
Kathleen Novack, County Clerk

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

Approved: x  
Vetoed: \_\_\_\_\_  
Date: 8-27-14,   
Daniel P. Vrakas, County Executive

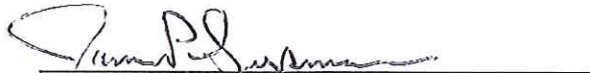
COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Waukesha Zoning Code hereby recommends **approval** of ZT-1764 (Five Diamonds, Inc.) in accordance with the attached "Staff Report and Recommendation".

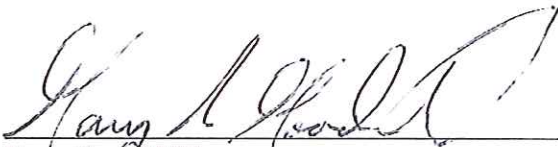
PARK AND PLANNING COMMISSION

July 17, 2014

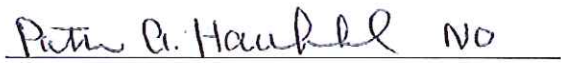
  
Robert Peregrine, Chairperson

  
James Siepmann, Vice Chairperson

  
William Mitchell

  
Gary Goodchild

  
Walter Kolb

  
Pat Haukohl

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

**DATE:** June 16, 2014

**FILE NO.:** ZT-1764

**TAX KEY NOs.:** WAKT 1352.007

**PETITIONER:** Five Diamonds, Inc.  
Tom Kelenic and Greg Beatty  
S20 W27809 Kame Terrace  
Waukesha, WI 53188

**LOCATION:**

The property is located in part of the SE ¼ of Section 14, T6N, R19E, Town of Waukesha, more specifically, at W234 S3555 Les Paul Parkway, containing approximately 31.8 acres.

**PRESENT ZONING CLASSIFICATION:**

R-1 Single Family Residence District and C-1 Conservancy District.

**PRESENT LAND USE:**

Recreational

**PROPOSED ZONING:**

P-1 Park, Recreation and Public District and C-1 Conservancy District.

**PROPOSED LAND USE:**

Recreational (private baseball facility).

**PUBLIC HEARING DATE:**

June 13, 2013.

**PUBLIC REACTION:**

At the June 13, 2013, Public Hearing, several residents spoke against the rezoning of the property:

- One resident asked the board not to extend the operating hours for the facility due to noise. She stated it would be a burden to not be able to open the windows at night.
- A resident stated that the land is privately owned and is a for-profit establishment and should not be rezoned because it's not a park. She stated that the facility is only open to those who pay to use it. She stated that the facility has not been a good neighbor because they have not followed the Conditional Use Permit and they have opened early, stayed open late, been noisy and used amplification systems when they shouldn't have. She stated that there should be a mechanism to monitor the Conditional Use Permit.
- A resident stated that the process for rezoning is inappropriate because the land use plan designates this land for residential use. She stated this is an obvious attempt to remove conditions. She stated this use would no longer be a Conditional Use under the P-1 District.

- A resident with his home for sale nearby is getting negative comments about the baseball facility. He stated that there is glare from the lights and extending the hours would not be good for the neighbors.
- A resident stated that rezoning the property will not benefit the Town residents because it is a private park, not for public use. The resident stated that the Town shouldn't be in the business of created private parks.

In May of 2014, Staff also received a phone call from an attorney on behalf of a nearby landowner. He expressed concern about the service of alcohol at a youth sports facility and questioned whether the Town had adequately conditioned the approval of the Plan of Operation Permit relative to alcohol service. He questioned whether there should be limitations on where alcohol can be served, carried and consumed. He also questioned whether there were controls as to what time the service or consumption of alcohol needed to cease. Planning & Zoning Staff advised him that the County does not have a role in the Site Plan/Plan of Operation process, as the lands are solely subject to Town Zoning. Staff did volunteer to acknowledge the concerns that he raised as part of this report.

**TOWN PLAN COMMISSION ACTION:**

The Town Plan Commission recommended approval of the rezoning to the Town Board at their June 13, 2013 meeting.

**TOWN BOARD ACTION:**

The Town Board approved the rezoning request at their June 13, 2013 meeting.

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

The Town of Waukesha Land Use Plan was amended in 2013 to designate the subject lands within the Recreational category. A similar County Plan amendment request was approved earlier this year to change the Low Density Residential designation to the Recreational category. The proposed P-1 District designation is compatible with the Recreational designation.

**OTHER CONSIDERATIONS:**

The Five Diamonds baseball complex was constructed and opened within the Town of Waukesha within the past couple of years. The site is currently zoned for residential use. The baseball complex was authorized by the Town as a Conditional Use within the R-1 Single Family Residential District and a Conditional Use Permit was issued to allow and regulate the operation. Many of the Conditional Use conditions related to initial site development activities, but others related to operational issues such as hours of operation, chemical storage, speaker systems, alcohol service, etc. (see Exhibit "A"). The Town's P-1 District allows both public and private recreational and institutional type facilities. The types of uses listed as permitted within the district include playfields, swimming pools, hockey rinks, volleyball courts, etc.

The petitioner is seeking the zoning change to make the facility an eligible permitted use rather than continuing to operate under a Conditional Use permit. As noted above, the petitioner has also recently sought and obtained land use plan amendments from both the Town and County to change the planned land use designation to Recreational.

As noted above, a number of comments were offered by both nearby Town and City of Waukesha residents who generally expressed opposition to the rezoning, with several individuals citing concerns about noise and lighting. In addition, the Town's former Planner detailed a history of non-compliance with Conditional Use conditions in his report to the Town dated August 3, 2012. The former Town Planner's report noted that from the start of play in 2012 through August 2, 2012, 26 complaints were filed with the Town noting fields lighted in violation of the 9:30 p.m. play limit and 40 violations were reported relative to the post game light limit. In addition, his report noted that there were 13 complaints regarding early use of the fields taking place before the allowable hours of operation. In May of 2013, the petitioner submitted a request to the Town to amend the hours of operation for the facility to 7:00 a.m. to 10:30 p.m., seven days a week. The Conditional Use Permit had specified that summertime hours were limited to 8:00 a.m. to 9:30 p.m. Monday to Saturday and Sundays from 8:00 a.m. to 7:00 p.m. with two field pole lights permitted to remain on for an additional one half hour for clean up.

In processing the rezone application, County Planning & Zoning Staff requested copies of both the existing Conditional Use Permit and the proposed Site Plan/Plan of Operation Permit for the operation in order to be able to understand and explain the implications of the proposed rezoning. The Town supplied the Conditional Use Permit but was not initially able to produce a document that clearly described the Site Plan/Plan of Operation conditions that the facility would operate under if rezoned. The new Town Planner agreed that clarification of conditions was necessary and initiated a process with the Town to finalize and package the proposed Plan of Operation conditions that would regulate the site. The resultant Plan of Operation Permit was issued by the Town on May 14, 2014 and is attached as Exhibit "B".

The proposed C-1 District boundaries are proposed to be drawn to coincide with the wetland delineation that was conducted at the site. No wetlands have been or will be filled. It should also be noted that a fairly extensive wetland restoration plan was prepared for this site and adjacent lands a couple of years ago with assistance from SEWRPC. It will be important that the Town monitor restoration activities over time to ensure that re-planting requirements and performance standards are met on the site. The initiation of restoration activities and preparation of the restoration plan occurred outside of the Conditional Use process and it will be important that the Town remain engaged in this project over time to ensure that the wetland resources are adequately protected.

As noted above, a concern has been raised about alcohol service at the facility. Consideration of such a specific operational issue is not a material issue to the proposed rezoning but is instead an issue that should be considered by the Town in its review of specific Site Plan/Plan of Operation requests. If the Town finds that the introduction of alcohol service is causing negative behavior, they may wish to re-consider or more tightly restrict the conditions of the Plan of Operation.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that the request be approved. The County Development Plan designates these lands within the Recreational category. Therefore, the proposed P-1 District category is consistent with the plan designation. The Town's P-1 District provides for both public and private recreational facilities.

The Town will need to rely on its Site Plan/Plan of Operation requirements and general zoning or

other ordinance provisions to monitor the continued operation of the facility. While negative comments were received from members of the public at the public hearing, those comments were generally about specific operational aspects of the existing baseball facility or were suggestions that a private baseball facility is not a park. As noted above, the Town's P-1 District accommodates private recreational facilities. The County's role relative to the proposed change in zoning is solely to act on the rezoning of lands. The particular operational aspects of the use such as hours of lighting, amplified announcements or alcohol service are not the purview of the County. Because the Town is subject to a Town Zoning Ordinance, the review of Plans of Operation and other zoning administration activities are Town functions. Likewise, it is the Town's responsibility to respond to zoning violations should any such issues arise in the future. Through local zoning regulations, the Town should have adequate regulatory resources available should lack of compliance with conditions or other general health, safety and welfare issues become a problem on the site. Staff believes that recreational use can be compatible with the surrounding rural and residential uses. However, like any other business or land user, it is important that such a use be operated in conformance with local ordinances and specific zoning conditions to ensure compatibility with the neighborhood.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning and Zoning Manager  
Attachments: Map, Ordinance, Exhibits "A", "B"

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**EXHIBIT "A"**

Document Number

CONDITIONAL USE PERMIT  
FIVE DIAMONDS, INC.  
W234 S3555 LES PAUL PARKWAY  
WAUKESHA, WI 53186

Document Title

3903322

REGISTER OF DEEDS  
WAUKESHA COUNTY, WI  
RECORDED ON

March 19, 2012 01:47 PM  
James R Behrend  
Register of Deeds

7 PGS  
TOTAL FEE: \$30.00  
TRANS FEE: \$0.00  
Book Page -



THIS CONDITIONAL USE PERMIT is hereby granted on the 14th day of April, 2011, by the Town of Waukesha (hereinafter "Town") to FIVE DIAMONDS, INC. (hereinafter "Grantee") for the operation of BASEBALL COMPLEX at the property located at W234 S3555 LES PAUL PARKWAY, WAUKESHA, WI 53186.

RECITALS

WHEREAS, Grantee has applied for a conditional use permit (the "CUP") pursuant to Section 13-2-9 of the Town of Waukesha Code of Ordinances for the operation of a **BASEBALL COMPLEX** at **W234 S3555 LES PAUL PARKWAY, Waukesha, Wisconsin, 53186** (the "Property") more specifically described as:

Lot 7, Deerfield Estates, being a subdivision recorded in the Waukesha County Register of Deeds Office on March 18, 2011 as Document No. 3824211, located in part of the Northwest one-quarter and Southwest one-quarter of the Southeast one-quarter of Section 14, Township 6 North, Range 19 East, Town of Waukesha, Waukesha County, Wisconsin.

Recording Area

Name and Return Address:

Town of Waukesha  
W250 S3567 Center Road  
Waukesha, WI 53189

Parcel Identification Number  
(PIN) - WAKT 1352 007

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WHEREAS, the Property is located in the R-1 Single Family Residence District; and

WHEREAS, Section 13-3-7 of the Town of Waukesha Code of Ordinances provides that recreational facilities use in the R-1 District is a conditional use; and

WHEREAS, Grantee has submitted all information as required under Section 13-2-9 of the Town of Waukesha Code of Ordinances and a Plan of Operation which is attached hereto and incorporated herein; and

WHEREAS, the Town Plan Commission reviewed the subject Conditional Use Permit application and Plan of Operation and held a Public Hearing on March 10, 2011 pursuant to Section 13-2-9 of the Town of Waukesha Code of Ordinances.



WHEREAS, the Town Board has considered the Plan Commission's recommendations and has determined that the proposed conditional use and structure(s) are in accordance with the purpose and intent of Chapter 13-3-7 of the Town Code of Ordinances and is found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or the community.

NOW THEREFORE, on April 14, 2011, the Town Board hereby approved the issuance of this conditional use permit to FIVE DIAMONDS, INC. ("Grantee"), for the operation of a BASEBALL COMPLEX, at the Property, which Conditional Use Permit shall be subject to the following conditions:

1. The Conditional Use Permit granted hereunder is for the sole benefit of FIVE DIAMONDS, INC., and this Conditional Use Permit shall not run with the property.
2. The business activities permitted hereunder are strictly limited to softball and/or baseball by children high school age or younger.
3. All business activities conducted on the Property shall conform to this Conditional Use Permit and the approved Plan of Operation and the Town of Waukesha Code of Ordinances. The approved Plan of Operation is attached hereto and incorporated herein.
4. Conditional Use Permit & Site Plan: The Conditional Use Permit dated stamped received August 6, 2010, site plan with revision date of February 17, 2011 and the revised plan of operations received dated February 17, 2011 are on file at the Town Clerk's office. The improvements shall be constructed in substantial compliance with the plans noted herein and are approved.

5. Hours of Operation:

March-April Monday – Saturday 8:00 am-8:30 pm. FIELD LIGHTS OUT AT 8:30pm; however two field light poles may remain lit until 9:00pm if necessary for egress and cleanup. Sundays 8:00am-7:00pm. FIELD LIGHTS OUT AT 7:00pm; however two field light poles may remain lit until 7:30pm if necessary for egress and cleanup.

May-August 15<sup>th</sup> Monday – Saturday 8:00am -9:30pm. FIELD LIGHTS OUT AT 9:30pm however two field light poles may remain lit until 10:00pm if necessary for egress and cleanup. Sundays 8:00am-7:00pm. FIELD LIGHTS OUT AT 7:00pm; however two field light poles may remain lit until 7:30pm if necessary for egress and cleanup.

August 16<sup>th</sup> – October 31<sup>st</sup> Monday – Saturday 8:00am – 8:30pm FIELD LIGHTS OUT AT 8:30pm; however two field light poles may remain lit until 9:00pm. if necessary for egress and cleanup. Sundays 8:00am-7:00pm. FIELD LIGHTS OUT AT 7:00pm; however two field light poles may remain lit until 7:30pm if necessary for egress and cleanup.

No field light poles may be used if field not in use for either baseball/softball or for egress and cleanup.

Indoor Facility – open year-round from 8am to 8:30pm.

6. Ball Fields: Ensure the design and construction of the ball fields does not encroach into the 30' C-1 offset. Comply with Section 13-2-10(b)(4). Submit 'as built' plans to the Town Engineer and Planner for review/approval prior to utilizing the facility.

7. **ATC Easement:** Comply with approval email from ATC dated February 8, 2011 and March 1, 2011 from Kim Stratton for all proposed improvements within the 150' electrical transmission line easement. Driveway plans to meet ATC requirement for Town Engineer's approval prior to commencing grading.
8. **Driveway Access and STH 164 Improvement:** The revised plans dated February 17, 2011 showing the improvements to STH 164 and a 35' wide driveway width minimum is approved. Access permit from the DOT for this development needs to be submitted to the Town Engineer to review prior to road/driveway construction. Left and right turn lanes need to be marked and construction completed prior to commencing any use for this facility.
9. **Concession Building:** The plan revision dated February 17, 2011 submitted with building material samples and colors for the Town Plan Commission and Board review is hereby approved per Section 13-2-4(e). All 4 gables to be hardi- plank. Cooking of food will be prohibited in all areas of the Property except for the concession area.
10. **No Liquor License:** A liquor license is not available for this property while Conditional Use Permit is in effect. The property shall follow Waukesha School District policy for drugs, alcohol and tobacco use. This policy will be prominently posted at the indoor facility; at the concession area; as well as any other area of the grounds and buildings as requested by the Town Board or a designee of the Town Board including, but not limited to the Town Attorney, the Town Building Inspector, the Town Planner, or law enforcement. There shall be no sale or consumption of liquor on the Property.
11. **Indoor Facility:** The Indoor Facility plan with revision date of February 17, 2011 is approved.
12. **Picnic Shelters:** Building plans with revision date of February 17, 2011 are approved with roof colors to match the concession stand roofs per Section 13-2-4(e).
13. **Dumpster:** Dumpster is to be located just north of the Indoor Facility with screening as shown on the landscaping plan. Masonry split face block to match indoor facility north wall "County split face" and the side, rear walls to be at least 6 feet tall. There will be no garbage collection by garbage contractor prior to 6:30 a.m.
14. **Play Area:** Submit more detailed plans for the play area for the Town Plan Commission and Board review/approval prior to constructing or use of the play area.
15. **Landscaping Plan:** Submit revised landscaping plans that comply with Section 13-2-4(f) for Town Plan Commission and Board review/approval prior to any building permit issuance or commencing use of the recreational complex.
16. **Public Announcement Audio System:** A public announcement system or any other voice amplification equipment or apparatus use is prohibited with this Conditional Use application due to the nuisance issues the sound would cause to the surrounding single family uses.
17. **Ball Field Light Poles:** The Ball Field light poles shall be installed in conformity with Town ordinances on the date of installation.
18. **Development Schedule:** Submit a development schedule for the complex for Town Plan Commission and Board review/approval within 60 days of the Conditional Use Permit being effective.

19. **Photometric Plan:** A revised photometric plan from the plans with revision date of February 17, 2011 which includes the buildings and parking lot lighting with maximum light pole height consistent with Town ordinances needs to be submitted and shall include the two, 10' pedestrian access path lights for Plan Commission and Town Board approval prior to installation or any building permit issuance.
20. **Storm Water:** Grantee must obtain County storm water and erosion control permits prior to commencing earth moving activity.
21. **County Recreational Trail:** Submit a copy of the recorded trail easement to the Town clerk's office prior to any building permit issuance.
22. **Security Gate:** Prior to installing any security gate, the Fire Chief needs to review and approve those plans. Keys for gate lock shall be placed in a Knox box per the Fire Chief directive and Town Ordinances.
23. **Outside Storage:** Outside storage of materials is not requested nor approved with this application.
24. **Signs:** Sign permit approvals from the Town Board are required for any sign per Section 13-2-15. Grantee shall comply with Section 13-2-15(f) regarding Signs in Business, Industrial, Park Recreation and Public Districts.
25. **Holding Tank:** Grantees are required to obtain a holding tank agreement from the Town Board.
26. **Knox Box:** A Knox box shall meet the requirements of the Town ordinance (See Fire Chief or Fire Department).
27. **Existing Trees:** The existing trees and shrubbery on the property shall remain substantially the same. Dead or diseased trees may be removed as needed.
28. **Terms of Conditional Use:** The terms and conditions of this Conditional Use Permit will be reviewed by the Plan Commission and Town Board at one year from the date of approval and shall be subject to an annual review thereafter. At the discretion of the Town Board, upon notice to the Grantee, and, upon such review, additional terms and conditions may be imposed as are deemed necessary and appropriate by the Town Board, so as to protect and promote the health, safety, and welfare in the area and intent of the Zoning Code. If this Conditional Use Permit does not continue in conformity with the conditions of the original approval, or subsequently approved amendments or changes, the conditional use order, and any subsequently approved amendments thereto, may be terminated by action of the Town Board following referral to the Plan Commission for a public hearing thereon by the Town Board. The Town Board may require complete termination of such Conditional Use Permit. The Conditional Use Permit shall terminate upon the cessation of the operations permitted under this Conditional Use Permit for a period of one year.
29. **Expiration of Conditional Use Status:** The conditional use status will terminate after a public hearing, if the Town Board of the Town of Waukesha determines any of the following:
  - a. The conditional use has not continued in substantial conformity with the conditions of the permit.
  - b. There has been a change in the character of the surrounding area or in the conditional use itself, or the conditional use has not continued in conformity with the conditions of this Conditional Use Permit, such that the conditional use is no longer compatible with surrounding areas.

c. The conditional use has been discontinued for a period of twelve (12) consecutive months.

30. **Other Regulations:** Grantees agree to abide by any other requirements imposed by the Town of Waukesha or any other government agencies. No use is hereby authorized unless that use is conducted in a lawful, orderly, and peaceful manner. Nothing in this order shall be deemed to authorize any public or private nuisance, or to constitute a waiver, exemption, or exception to any law, ordinance, order, or rule of the Town of Waukesha, the State of Wisconsin, the United States of America, or other duly-constituted authority, except only to the extent that it authorizes the use of the subject premises in specific respects described herein.
31. **Use Restricted:** This conditional use is granted for the express conditions contained herein. Any changes will require the Grantees to return to the Plan Commission (for advisory review); and Town Board of the Town of Waukesha for approval. Changes or alterations including, but not limited to, a change in use, premises, lands, or ownership of the property in question shall require a new Conditional Use Permit with all zoning procedures at the time being followed. The allowed uses of the subject property must at no time be hazardous, harmful, obnoxious, offensive, or a nuisance by reasons of appearance, noise, dust, smoke, odor, or other similar factors. Any use not specifically listed, as permitted, shall be considered to be prohibited, except as may be otherwise specified herein. In case of a question as to the classification of use, the question shall be submitted to the Plan Commission for determination.
32. **Exterior Housekeeping:** The Grantees will keep the exterior condition of the premises in a neat and orderly condition at all times so the premises will not detract from neighboring premises. There shall be no outside storage of junk, debris, construction material, or other refuse materials within the property and all such materials shall be disposed of promptly and properly. The tower shall be maintained to keep it in good repair.
33. **Fees:** The cost of professional services incurred by the Town of Waukesha for the review of, and preparation of, the conditional use document or attendance at meetings or other related professional services for this application shall be paid by the Grantees. Furthermore, in the event the Town of Waukesha is required to enforce any of the conditions in this Conditional Use Permit due to a violation of those conditions by the Grantees, the Grantees shall pay all professional fees incurred by the Town of Waukesha, including, but not limited to reasonable attorney fees.
34. **Transferability:** This Conditional Use granted to Five Diamonds, Inc. ("Grantee") shall not be transferable upon sale or lease of the subject property.
35. **Inspection:** The Grantees will allow the Town of Waukesha representatives to inspect the premises at any reasonable time for the purpose of determining compliance with the Conditional Use Permit.
36. **Private Rights.** This grant of a Conditional Use Permit is not to be in any way interpreted to abrogate any private rights the other lot owners in that area may have pursuant to deed restrictions or restrictive covenants.
37. **Interpretation:** If any aspect of this Conditional Use Permit is in conflict with any other aspect, the more restrictive provisions shall be controlling, as determined by the Plan Commission of the Town of Waukesha.
38. **Severability:** Should any paragraph or phrase of this Conditional Use Permit be determined by a court to be unlawful, illegal, or unconstitutional, said determination as to the particular phrase or paragraph shall not void the rest of the Conditional Use Permit and the remainder shall continue in full

force and effect.

- 39. **Recordation:** This document shall be recorded at the Waukesha County Register of Deeds by the Town of Waukesha Clerk's office.
- 40. **Grounds Maintenance:** No grounds maintenance is allowed prior to 7:30 a.m. Monday through Friday, and later than dusk any day of the week. No grounds maintenance is allowed prior to 8:00 a.m. on Saturdays, Sundays, or holidays.
- 41. **Chemical Bookkeeping:** The Grantee shall keep a detailed list of both the type and amount of chemicals used to maintain the property, and provide this list to the Town of Waukesha for periodic review.
- 42. **Traffic Control Costs:** The Grantee will be responsible for reimbursing the Town of Waukesha for all costs incurred in the event that traffic control services are provided.
- 43. **Changes to Grantee's proposed use subsequent to the initial issuance of this Conditional Use Permit shall require an amendment to this Conditional Use Permit.**
- 44. **Notice to Grantee:** Notice required to be given to the Grantee shall be delivered or mailed to the Grantee at the following address:

Grantee: Five Diamonds, Inc.

Address: S20 W27809 Kame Terrace Dr., Waukesha, WI 53188

Phone Number: 262-513-3102

The terms and conditions of this Conditional Use Permit are accepted by the Grantee effective this 14<sup>th</sup> day of April, 2011.

GRANTEE:

By: *Thomas Kelenic*  
 Thomas Kelenic, President and Director

By: *Gregory Beatty*  
 Gregory Beatty, Secretary and Director

STATE OF Wisconsin )  
 COUNTY OF Waukesha ) ss.

Personally came before me this 17 day of

March, 2012, the above-named

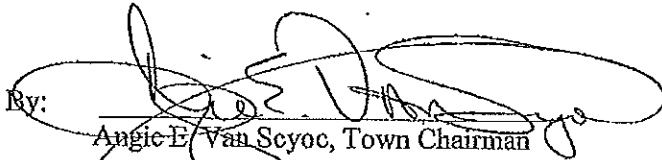
Thomas Kelenic & Gregory Beatty  
 to me known to be the person who executed the  
 foregoing instrument and acknowledged the same.

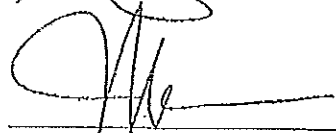
Jamie Salentine  
 Notary Public, 10-5-2014 County, Waukesha

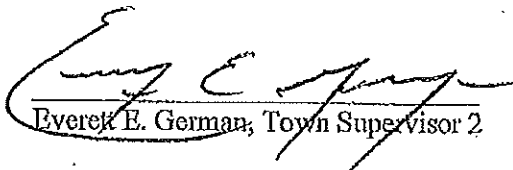


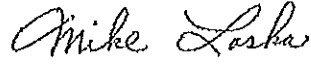
This Conditional Use Permit is hereby issued this 14<sup>th</sup> day of April, 2011 subject to the conditions provided herein.

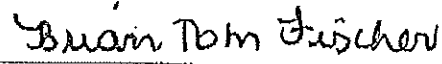
**TOWN OF WAUKESHA**

By:   
Angie E. Van Scyoc, Town Chairman

By:   
Joe Barske, Town Supervisor 1

By:   
Everett E. German, Town Supervisor 2

By:   
Mike Laska, Town Supervisor 3

By:   
Brian Tom Fischer, Supervisor 4 03/19/12

ATTEST:

  
Jamie Salentine, Clerk-Treasurer



This document drafted by Attorney Douglas Hoffer, de la Mora & de la Mora, Elm Grove, Wisconsin

# EXHIBIT "B"

Town of Waukesha  
W250 S3567 Center Drive  
Waukesha, WI 53189

## PLAN OF OPERATION PERMIT

Permit Type: Plan of Operation

File No: PO-2014-WAKT 1352007

This permit certifies that under the Town of Waukesha Code of Ordinances, the property described below may be used or occupied as indicated:

### Permit Issued To:

Applicant/Agent Information:	Five Diamonds, Inc. W234 S3555 Les Paul Parkway Waukesha, WI 53186
Property Owner Information:	Five Diamonds, Inc. W234 S3555 Les Paul Parkway Waukesha, WI 53186

### Property Information / Legal Description:

W234 S3555 Les Paul Parkway, Waukesha, WI 53186

### Use(s) Allowed:

Operation of a baseball complex.

### Conditions of Permit:

1. The Plan of Operation approval is limited to WAKT 1352007, approximately 31.86 acres in size.
2. The Plan of Operation approval is limited to Five Diamonds, Inc. (c/o Tom Kelenic) to allow the continued operation of a baseball complex in conjunction with the permitted uses allowed in the P-1, Park, Recreation and Public District.
3. The hours of operation for use by the general public are Sunday to Saturday from 7:00am to 10:30pm. No field lights can be on before 7:00am and after 10:30pm. Employees are allowed access 24 hours a day.
4. The Plan of Operation shall reflect the total number of employees as ten (10) full-time employees or the equivalent part-time employees. This condition excludes the number of subcontracting umpires for baseball/softball games.
5. The applicant shall be allow to have a maximum of 15 events per year with use of amplification apparatus and prior notification to the Town Clerk.
6. The applicant shall take any steps deemed necessary by the Town of Waukesha Town Board related to dust control and parking lot restriping.
7. The applicant shall complete the landscaping of the parking lot at the time the paving of the parking lot is complete.
8. The applicant is prohibited from mowing the grounds and subject property prior to 7:00am and after sunset, Sunday through Saturday.
9. The applicant shall keep a detailed list of both the type and amount of chemicals used to maintain the property, and provide this list to the Town of Waukesha for periodic review.
10. The applicant will keep the exterior condition of the premises in a neat and orderly condition at all times so the premises will not detract from neighboring premises. There shall be no outside storage of junk, debris, construction material, or other refuse materials within the property and all such materials shall be disposed of promptly and properly.

11. The applicant will allow Town of Waukesha representatives to inspect the premises following a 24 hour notice for the purposes of determining compliance with this approval.
12. This approval is granted for the express conditions stated herein. Changes or alterations including, but not limited to, a change in use, premises, lands, or ownership of the property in question shall require a new Site Plan & Plan of Operation permit with all the zoning procedures at the time being followed. The allowed uses of the property must at no time be hazardous, harmful, obnoxious, offensive, or a nuisance by reasons of appearance, noise, dust, smoke, odor, or other similar factors. Any use not specifically listed, as permitted, shall be considered to be prohibited, except as may be otherwise specified herein.
13. The applicant shall obtain the appropriate permits from the Town of Waukesha.
14. The applicant shall reimburse the Town of Waukesha for all costs and expenses 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.
15. The Plan of Operation shall reflect the sale of fermented malt beverages subject to the petitioner applying for and obtaining a Class "B" liquor license from the Town of Waukesha. The petitioner shall comply with all conditions set forth by the liquor license. Carry-ins are prohibited on the subject property.

Date of Town Board Approval: May 8, 2014

Date Issued: May 14, 2014

Termination Date (if applicable): N/A

Signature of Town Clerk: \_\_\_\_\_

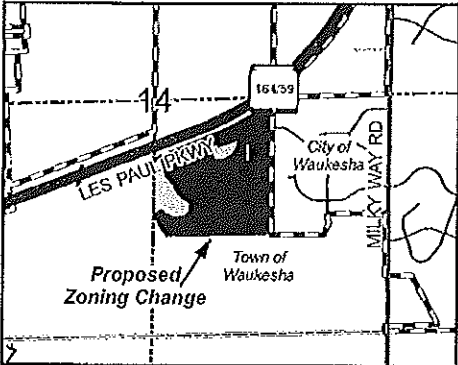
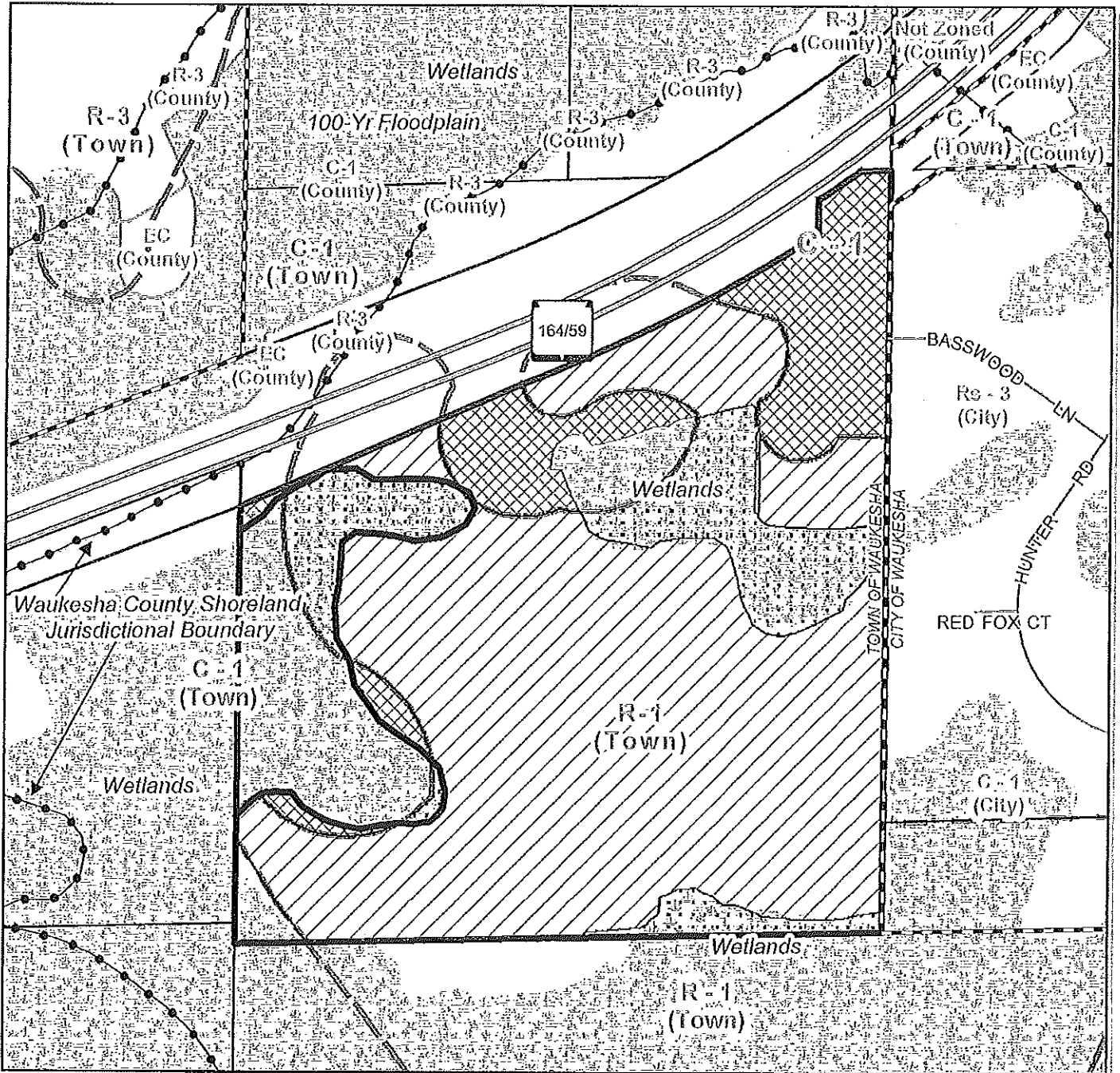





Kathy Nickolaus



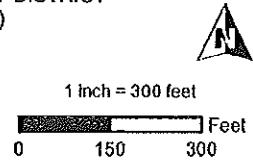
# ZONING AMENDMENT

PART OF THE SE 1/4 OF SECTION 14  
TOWN OF WAUKESHA



-  TOWN ZONING AMENDMENT FROM R-1 SINGLE FAMILY RESIDENCE DISTRICT TO P-1 PARK, RECREATION, & PUBLIC DISTRICT (22.1 ac)
-  TOWN ZONING AMENDMENT FROM R-1 SINGLE FAMILY RESIDENCE DISTRICT TO C-1 CONSERVANCY DISTRICT (4.7 ac)
-  TOWN ZONING AMENDMENT FROM C-1 CONSERVANCY DISTRICT TO P-1 PARK, RECREATION, & PUBLIC DISTRICT (4.6 ac)

FILE.....ZT-1764  
 DATE.....06/16/14  
 AREA OF CHANGE.....31.4 ACRES  
 TAX KEY NUMBERS.....WAKT1352.007 & .009



Prepared by the Waukesha County Department of Parks and Land Use

STATE OF WISCONSIN

WAUKESHA COUNTY

TOWN OF WAUKESHA

ORDINANCE NO. 2013-08

ORDINANCE REZONING PROPERTIES FROM A PARCEL FROM R-1 SINGLE FAMILY RESIDENCE  
AND C-1 CONSERVANCY DISTRICT TO P-1 PARK, RECREATION AND PUBLIC DISTRICT AND C-1  
CONSERVANCY DISTRICT

TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN

THE TOWN BOARD OF THE TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN  
DOES ORDAIN AS FOLLOWS:

**Section 1:** The following-described property is rezoned from the R-1 (Single Family Resident District)  
and C-1 (Conservancy District) zoning classifications: to the P-1 (Park, Recreation and Public District)  
and C-1 (Conservancy District) zoning classifications:

See attached legal description which is appended as Exhibit A, and a map depicting the area of land  
rezoned, and designating those portions of the lands to be rezoned to the P-1 (Park, Recreation and  
Public District) and C-1 (Conservancy District) zoning classification.

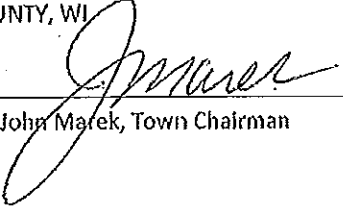
**SECTION 2:** All ordinances or parts of this ordinance, conflicting or contravening the provisions of this  
ordinance are hereby repealed.

**SECTION 3:** This ordinance shall take effect upon passage and posting as provided by law.

PASSED AND ADOPTED this 13<sup>th</sup> day of June, 2013.

TOWN BOARD, TOWN OF WAUKESHA,  
WAUKESHA COUNTY, WI

By:

  
John Marek, Town Chairman

ATTEST:



Jamie Salentine, Town Clerk-Treasurer

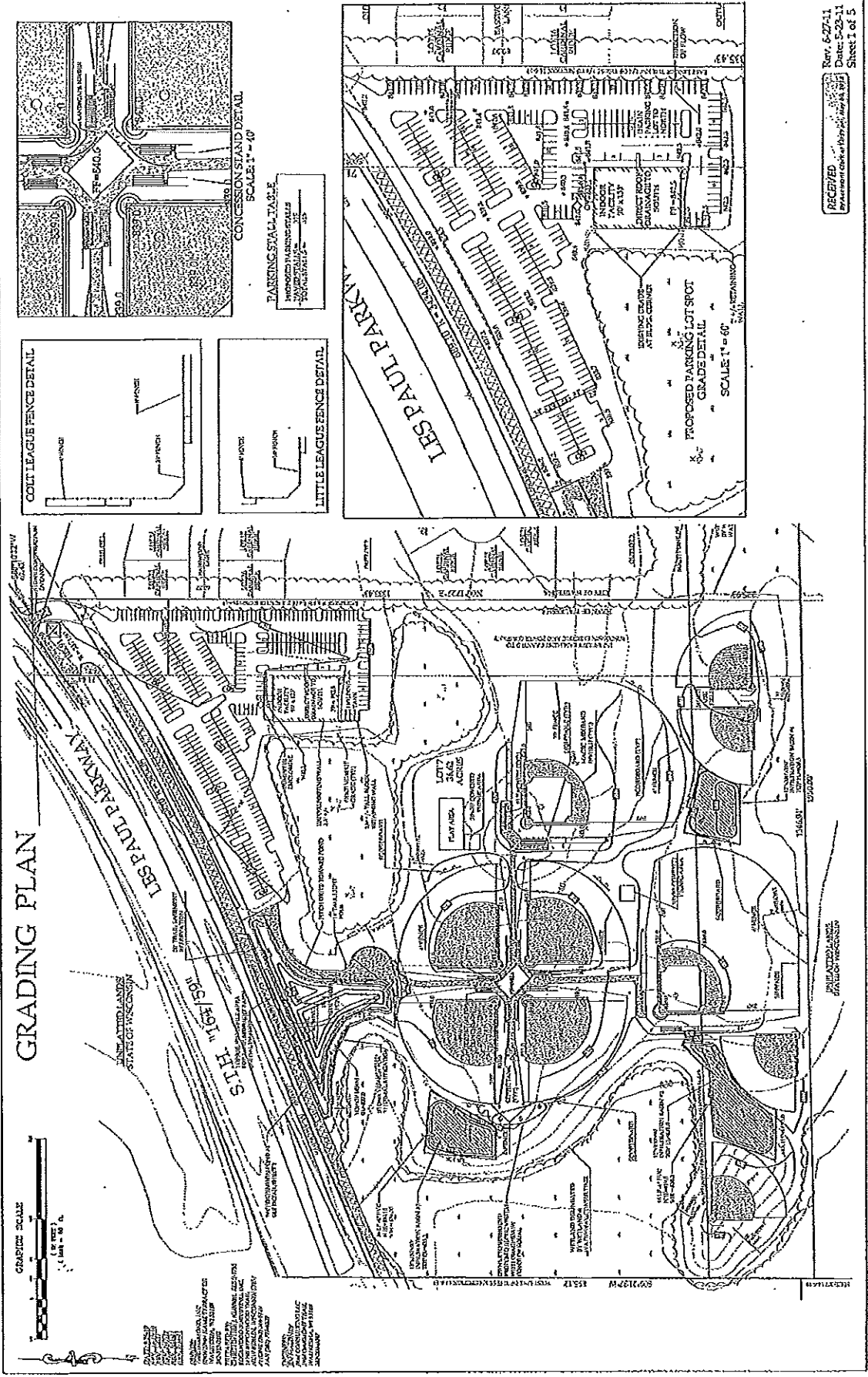
Z:\Documents\Clerk-Treasurer\Plan Commission\Rezone\Waukesha\Ordinance #2013-08 - FIVE DIAMONDS Rezone - F-13-13.doc

## TOWN'S EXHIBIT "A"

PROPERTY OWNERS: Five Diamonds, Inc

LEGAL DESCRIPTION WAKT 1352.007

Lot 7, Deerfield Estates, being a subdivision recorded in the Waukesha County Register of Deeds Office on March 18, 2011 as Document No. 3824211, located in part of the Northwest one-quarter and Southwest one-quarter of the Southeast one-quarter of Section 14, Township 6 North, Range 19 East, Town of Waukesha, Waukesha County, Wisconsin.



WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-08/26/14

(ORD) NUMBER-1690042

- |                          |                          |
|--------------------------|--------------------------|
| 1 R. KOLB.....AYE        | 2 D. Zimmermann.....AYE  |
| 3 R. MORRIS.....AYE      | 4 J. BATZKO.....AYE      |
| 5 J. BRANDTJEN.....AYE   | 6 J. WALZ.....AYE        |
| 7 J. GRANT.....AYE       | 8 E. HIGHUM.....AYE      |
| 9 J. HEINRICH.....AYE    | 10 D. SWAN.....AYE       |
| 11 C. HOWARD.....AYE     | 12 P. WOLFF.....AYE      |
| 13 P. DECKER.....AYE     | 14 C. PETTIS.....AYE     |
| 15 W. KOLB.....AYE       | 16 M. CROWLEY.....AYE    |
| 17 D. PAULSON.....AYE    | 18 L. NELSON.....AYE     |
| 19 K. CUMMINGS.....NAY   | 20 T. SCHELLINGER....AYE |
| 21 W. ZABOROWSKI.....AYE | 22 P. JASKE.....AYE      |
| 23 K. HAMMITT.....       | 24 S. WHITTOW.....       |
| 25 G. YERKE.....AYE      |                          |

TOTAL AYES-22

TOTAL NAYS-01

CARRIED X

DEFEATED \_\_\_\_\_

UNANIMOUS \_\_\_\_\_

TOTAL VOTES-23