

ENROLLED ORDINANCE 172-081

YEAR 2018 APPROVAL OF AMENDMENT TO THE COMPREHENSIVE  
DEVELOPMENT PLAN FOR WAUKESHA COUNTY  
(2A –DOWNING, SECTION 14, T8N, R18E,  
TOWN OF MERTON)

WHEREAS on February 24, 2009, the Waukesha County Board of Supervisors in Enrolled Ordinance No 163-81, approved a Comprehensive Development Plan for Waukesha County; and

WHEREAS said Comprehensive Development Plan for Waukesha County provides for annual update and amendment procedures; and

WHEREAS, on February 22, 2018, the Waukesha County Park and Planning Commission held a Public Hearing to receive testimony on proposed changes to the Comprehensive Development Plan for Waukesha County; and

WHEREAS, the staff has identified in a “Staff Report and Recommendation” dated March 1, 2018, a summary of the Public Hearing comments and a Staff Recommendation for the proposed change to the Comprehensive Development Plan for Waukesha County; and

WHEREAS, the “Staff Report and Recommendation” has been reviewed by the Waukesha County Park and Planning Commission on March 1, 2018, and a recommendation was reported to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors as required in the Comprehensive Development Plan for Waukesha County.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the following amendment is hereby conditionally approved to the Year 2035 Comprehensive Development Plan for Waukesha County.

2. In the Town of Merton, the following requests are being made:

A. Thomas and Patricia Downing, W293 N7882 Camp Whitcomb Road, Hartland, WI 53029, request a portion of the property located in part of the W ½ and the NE ¼ of Section 14, T8N, R18E, Town of Merton (Tax Key No. MRTT 0341.977), be amended from the Primary Environmental Corridor category to the Suburban II Density Residential category (3.0 to 4.9 acres of area per dwelling unit), to allow for a second residence on the property as part of a Planned Unit Development.

The request is approved subject to the following conditions:

1. The area of the property that is not subject to this land use plan amendment shall be preserved in perpetuity by means of a conservation easement. The easement language shall be reviewed and approved by the Waukesha County Planning and Zoning Division, and recorded in the Waukesha County Register of Deeds office prior to any development activities taking place.

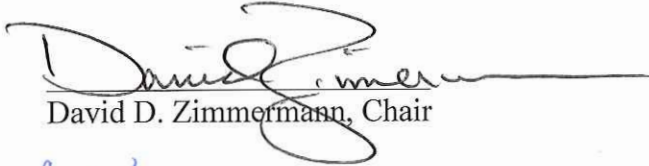
2. The existing pier location shall be used as a single point of access to the lake by motorized equipment. A second pier may be constructed within the same vicinity to accommodate two boat slips for each residential unit. A pier plan shall be submitted to the Waukesha County Planning and Zoning Division, prior to any additional pier improvements being made. This restriction shall be included in the language of the conservation easement.

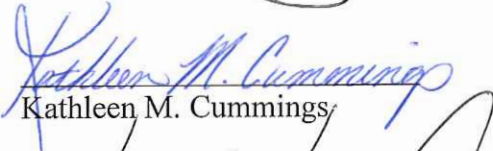
BE IT FURTHER ORDAINED that a more detailed description and map of the aforementioned amendment is on file in the office of the Waukesha County Department of Parks and Land Use.

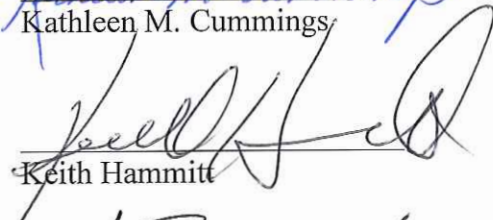
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Merton.

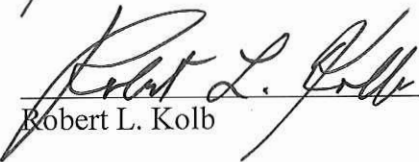
YEAR 2018 APPROVAL OF AMENDMENT TO THE COMPREHENSIVE  
DEVELOPMENT PLAN FOR WAUKESHA COUNTY  
(2A -DOWNING, SECTION 14, T8N, R18E,  
TOWN OF MERTON)

Presented by:  
Land Use, Parks, and Environment Committee

  
David D. Zimmermann, Chair

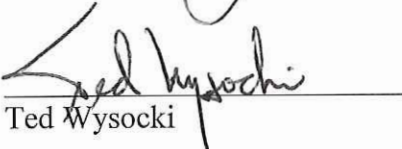
  
Kathleen M. Cummings

  
Keith Hammitt

  
Robert L. Kolb

  
William Mitchell

  
Thomas J. Schellinger

  
Ted Wysocki

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

Date: 3/27/18,   
Kathleen Novack, County Clerk

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

Approved: X  
Vetoed: \_\_\_\_\_  
Date: 3/30/18,   
Paul Farrow, County Executive

<b>D1 - Kolb</b>	<b>AYE</b>	<b>D14 - Wood</b>	<b>AYE</b>
<b>D2 - Zimmermann</b>	<b>(M) AYE</b>	<b>D15 - Mitchell</b>	<b>AYE</b>
<b>D3 - Morris</b>	<b>(2) AYE</b>	<b>D16 - Crowley</b>	<b>AYE</b>
<b>D4 - Batzko</b>	<b>AYE</b>	<b>D17 - Paulson</b>	<b>AYE</b>
<b>D5 - Dondlinger</b>	<b>AYE</b>	<b>D18 - Nelson</b>	<b>AYE</b>
<b>D6 - Walz</b>	<b>AYE</b>	<b>D19 - Cummings</b>	<b>AYE</b>
<b>D7 - Grant</b>	<b>AYE</b>	<b>D20 - Schellinger</b>	<b>AYE</b>
<b>D8 - Michalski</b>	<b>AYE</b>	<b>D21 - Zaborowski</b>	<b>AYE</b>
<b>D9 - Heinrich</b>	<b>AYE</b>	<b>D22 - Wysocki</b>	<b>AYE</b>
<b>D10 - Swan</b>	<b>AYE</b>	<b>D23 - Hammitt</b>	<b>AYE</b>
<b>D11 - Howard</b>	<b>AYE</b>	<b>D24 - Whittow</b>	<b>AYE</b>
<b>D12 - Wolff</b>	<b>AYE</b>	<b>D25 - Johnson</b>	<b>Absent</b>
<b>D13 - Decker</b>	<b>AYE</b>		

172-0-081

Passed (24 Y - 0 N - 1 Absent)

Majority Vote

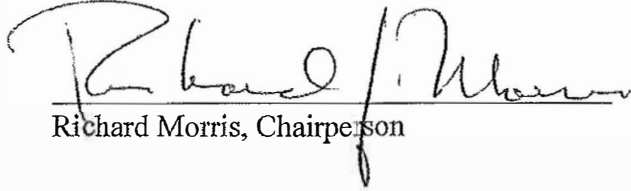


**COMMISSION ACTION**

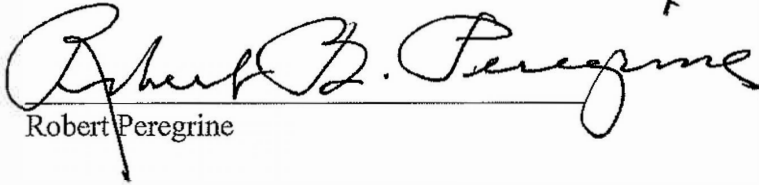
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance entitled "Year 2018 Approval of Amendment to the Comprehensive Development Plan for Waukesha County, (2A – Downing, Section 14, T8N, R18E, Town of Merton) hereby recommends **approval**.

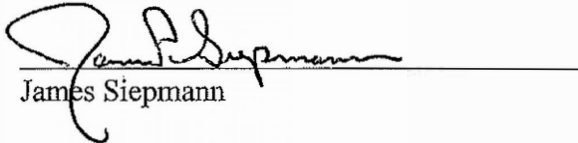
**PARK AND PLANNING COMMISSION**

**March 1, 2018**

  
Richard Morris, Chairperson

  
William Mitchell

  
Robert Peregrine

  
James Siepmann

Absent  
William Maslowski

  
Bonnie Morris

**WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE**  
**STAFF REPORT AND RECOMMENDATION FOR A**  
**YEAR 2018 AMENDMENT TO THE COMPREHENSIVE**  
**DEVELOPMENT PLAN FOR WAUKESHA COUNTY**  
**(2A – THOMAS AND PATRICIA DOWNING),**  
**TOWN OF MERTON**

**DATE:** March 1, 2018

**PUBLIC HEARING DATE:**  
Thursday, February 22, 2018, 1:00 p.m.

**REQUEST:**  
2 (A) Year 2018 amendment to the Comprehensive Development Plan.

*Thomas and Patricia Downing*, W293 N7882 Camp Whitcomb Road, Hartland, WI 53029, request a portion of the property located in part of the NW ¼ of the NE ¼ of Section 14, T8N, R18E, Town of Merton (Tax Key No. MRTT 0341.977), be amended from the Primary Environmental Corridor category to the Suburban II Density Residential category (3.0 to 4.9 acres of area per dwelling unit), to allow for a second residence on the property as part of a Planned Unit Development.

**EXISTING LAND USE CATEGORY**  
Primary Environmental Corridor.

**PROPOSED LAND USE CATEGORY**  
Amend approximately 1.9 acres of land to the Suburban II Density Residential category (3.0 to 4.9 acres of area per dwelling unit). The undisturbed areas will remain in the Primary Environmental Corridor category.

**PUBLIC REACTION**  
The adjacent property owner located directly to the south was concerned with the potential of the isolated wetland on the south part of the property being filled for development purposes in the future. He asked questions about protections in place. The Planning and Zoning Division Staff advised that the wetland is protected by State rules and County Zoning, and will be further protected by a protective restriction being volunteered by the property owner.

**TOWN PLAN COMMISSION ACTION**  
At their meeting on January 3, 2018, the Town of Merton Plan Commission unanimously made a recommendation to the Town Board for approval of the request to amend the Town of Merton Land Use Plan for a portion of the property from the Primary Environmental Corridor category to the Suburban II Density Residential category (3.0 to 4.9 acres of area per dwelling unit).

**TOWN BOARD ACTION**  
Following a public hearing, the Town of Merton Board unanimously approved the Town plan amendment at their February 12, 2018, meeting.

**STAFF ANALYSIS:**  
The subject property is approximately 10.5 acres in size, excluding the established road right-of-way of Camp Whitcomb Road. The property has frontage on Lake Keesus and there are wetlands located along the shore of the lake and an isolated wetland located on the south side of the property. A

majority of the property is heavily wooded with steep slopes. There is a flat area located on a ridge that is largely disturbed. The flat area contains a single-family residence, a detached garage and shed. The State of Wisconsin owns the adjacent property to the north for preservation/open space purposes. There are single family residential lots located on the west and east sides of the property. The Union Pacific Railroad borders the property to the south.

The petitioners are proposing to construct a second single-family residence on the property for their daughter and family. In accordance with the Comprehensive Development Plan for Waukesha County, lands designated in the Primary Environmental Corridor are limited to a residential density of one unit per five acres, excluding wetland acreage. Once the wetlands are excluded from the overall acreage, there is approximately eight acres total that can be used for density purposes, which would not provide for a second living unit. The petitioners have demonstrated that the area where the second home site is proposed has been disturbed for over 50 years. Four cottages were constructed in the 1960's with a driveway constructed along almost the entire extent of the ridge. Three of the cottages were removed and the petitioner constructed a single-family residence in the early 1980's. They use one of the cottages as a shed. There are a few mature native trees in the areas of the property that is subject to the request, but a majority of the area is mowed yard. The petitioners are proposing to remove a total of two to four healthy trees to accommodate construction.

In order to accommodate the second home site (see Exhibit "A"), the petitioners are proposing to amend the driveway area and lands immediately surrounding the existing and proposed homes. Driveway (Unit 100 and Unit 200) from the Primary Environmental Corridor category to the Suburban II Density Residential category (3 to 4.9 acres of area per dwelling unit). The area of amendment includes a 66 ft. wide strip of land to accommodate a driveway and a total of 63,335 sq. ft. to accommodate the existing and proposed home sites, private sewage systems and yard.

By separate application, the petitioners are also requesting to rezone the area being considered for a land use plan amendment by removing the EC Environmental Corridor Overlay District from said area. At the recommendation of the Waukesha County Park and Planning Commission as part of a conceptual review, the petitioners have opted to also request a Conditional Use Permit for a Planned Unit Development. The Planned Unit Development would allow the petitioner to construct a condominium style development with two residences on a single lot rather than dividing the property, which would have included a lot not abutting a public road. The petitioners have agreed to place the undisturbed area that remains in the Primary Environmental Corridor in a conservation easement and preserve the area in perpetuity. The petitioners have also agreed to use the existing pier location as a single access to the lake that would serve both condominium owners.

**STAFF RECOMMENDATION:**

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

1. The area of the property that is not subject to this land use plan amendment shall be preserved in perpetuity by means of a conservation easement. The easement language shall be reviewed and approved by the Waukesha County Planning and Zoning Division, and recorded in the Waukesha County Register of Deeds office prior to any development activities taking place.

2. The existing pier location shall be used as a single point of access to the lake by motorized equipment. A second pier may be constructed within the same vicinity to accommodate two boat slips for each residential unit. A pier plan shall be submitted to the Waukesha County Planning and Zoning Division, prior to any additional pier improvements being made. This restriction shall be included in the language of the conservation easement.

This amendment will allow the construction of a second residence on the property within an area that has been disturbed for over 50 years. The proposed request complies with the objectives and standards of the Comprehensive Development Plan for Waukesha County in preserving the overall integrity of the environmental corridor on the site. The proposed improvements are limited to an existing disturbed area and the proposed density is consistent with the surrounding land uses. The remainder of the property will be held in a conservation easement and be protected in perpetuity. Lake access will also be limited to a single location, which will protect the wetland vegetation that occupies a majority of the shore frontage from further disturbance.

Respectfully submitted,

*Amy Barrows*

Amy Barrows  
Senior Planner

Attachment: Exhibit "A", Cattail Farm Condominium Plat  
Map  
Town Ordinance

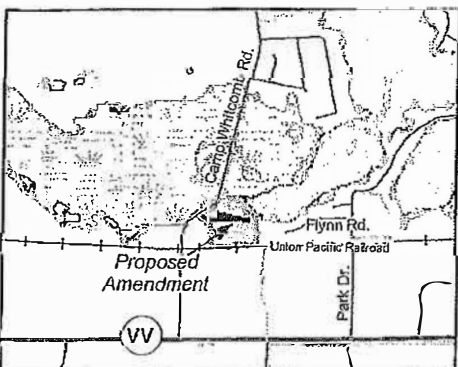
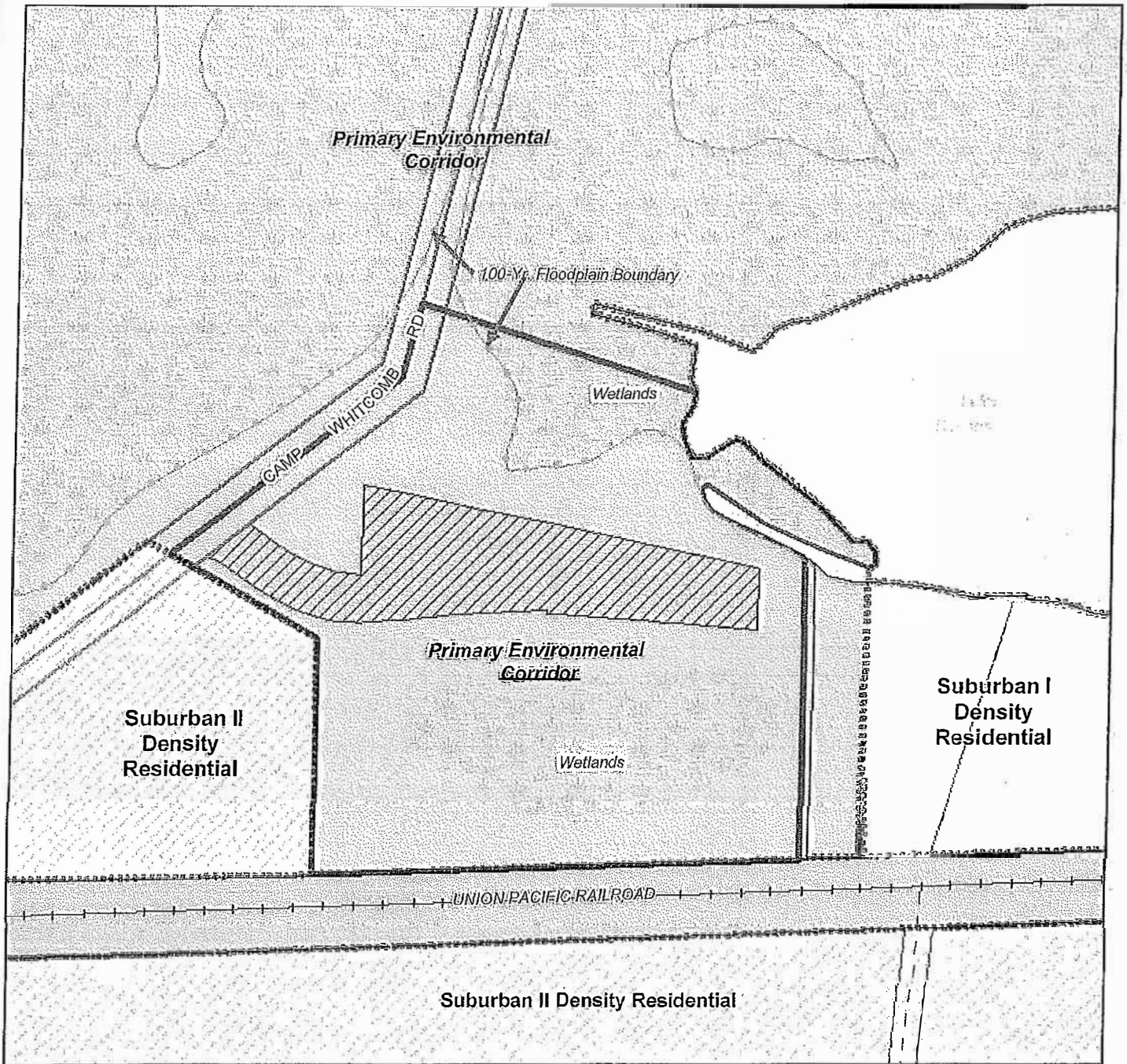
N:\PRKANDLU\Planning and Zoning\Waukesha County Land Development Plan\STAFF REPORT AND RECOMMENDATION\2018\2A Downing mrt.doc





# DEVELOPMENT PLAN AMENDMENT

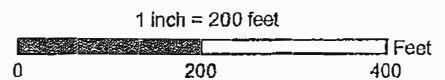
PART OF THE NE 1/4 OF SECTION 14  
TOWN OF MERTON



COUNTY DEVELOPMENT PLAN AMENDMENT FROM PRIMARY ENVIRONMENTAL CORRIDOR TO SUBURBAN II DENSITY RESIDENTIAL



PETITIONER.....DOWNING (2A)  
 DATE OF PLAN COMM CONSIDERATION .....03/01/18  
 AREA OF CHANGE.....1.9 ACRES  
 TAX KEY NUMBER.....MRTT 0341.977



Prepared by the Waukesha County Department of Parks and Land Use

File Number: 172-O-081

ORDINANCE NO. \_\_\_02122018 A\_\_\_\_\_

AN ORDINANCE TO AMEND THE TOWN OF  
MERTON COMPREHENSIVE PLAN – 2035

---

WHEREAS, the Town of Merton Town Board has created a Plan Commission pursuant to §62.23(1), Wis. Stats.; and

WHEREAS, it is the function and duty of the Town Plan Commission pursuant to §62.23(2), Wis. Stats., to prepare and adopt a Master Plan as a whole or as parts thereof, and such plans are to aid the Plan Commission and Town Board in making day-to-day development decisions; and

WHEREAS, the Town of Merton Plan Commission recommended the adoption of a Master Plan, and the Town of Merton Town Board adopted a Comprehensive Land Use Plan-2035 by ordinance on May 12, 2009; and

WHEREAS, Chapter 8, the Land Use Element of the Comprehensive Land Use Plan-2035 and accompanying map, and the Town of Merton Land Use Plan Map identify the Downing property as Environmental Corridor Overlay (see Exhibit A attached hereto and incorporated herein by reference); and

WHEREAS, since the enactment of §66.1001, Wis. Stats., the Town of Merton Planner and Plan Commission have been engaged in a Comprehensive Plan update to analyze and consider amendments to the aforementioned Master Plan; and

WHEREAS, §66.1001, Wis. Stats., provides that the Plan Commission may recommend amendments to comprehensive plan by adopting a resolution by a majority vote of the entire Plan Commission, which resolution shall refer to maps and other descriptive materials that relate to one or more elements of a comprehensive plan; and

WHEREAS, an application has been made by Thomas and Pat Downing, W293 N7882 Camp Whitcomb Road, Hartland, Wisconsin, to amend the Town of Merton Comprehensive Land Use Plan-2035 and map to change the land use designations, a limited disturbed area, from Environmental Corridor Overlay to Suburban II Density Residential; and

WHEREAS, the purpose of amending the Land Use Plan and map from Environmental Corridor Overlay to Suburban II Density Residential designations (and to preserve wetlands) for the aforementioned properties is to conform to the current use of said properties and to be consistent with the land use designation of neighboring properties.

WHEREAS, pursuant to §66.1001, Wis. Stats., no amendment may take effect until the Town Board enacts an ordinance that adopts the amendment; and

WHEREAS, §66.1001, Wis. Stats., provides that the Town Board must hold at least one public hearing at which the proposed ordinance is discussed, which public hearing must be preceded by a Class 1 notice under Chapter 985 that is published at least 30 days before the hearing is held; and

WHEREAS, the Town Board gave appropriate notice of a public hearing to be held on February 12, 2018, beginning at 6:30 p.m. at the Town of Merton Town Hall, W314 N7624 Highway 83, North Lake, Wisconsin 53064, to consider the amendments described above; and

WHEREAS, the public hearing was held on February 12, 2018.

NOW THEREFORE, BE IT HEREBY ORDAINED that the Town Board of the Town of Merton adopts this ordinance which amends the Comprehensive Land Use Plan-2035 by amending the land use of land described from Environmental Corridor Overlay to Suburban II Density Residential (see Exhibit A attached hereto and incorporated herein by reference) for the Thomas and Pat Downing property.

BE IT FURTHER ORDAINED that a copy of this Comprehensive Plan amending ordinance shall be sent to all of the following:

1. Every governmental body that is located in whole or in part within the boundaries of the Town of Merton.
2. The clerk of every local governmental unit that is adjacent to the Town of Merton.
3. The Wisconsin Land Council.
4. The Department of Administration.
5. The Southeastern Wisconsin Regional Planning Commission.
6. The public library that serves the area in which the Town of Merton is located.


BE IT FURTHER ORDAINED that this ordinance shall be effective upon passage, posting and publication as required by law.

DATED: February 12, 2018

TOWN OF MERTON

By:   
Tim Klink, Chairman

ATTEST:

  
Donna Hann, Clerk

Date Adopted: 2-12-18  
Date Published: 2-13-18  
Effective Date: 2-13-18