

ENROLLED ORDINANCE 168-98

AMEND THE DISTRICT ZONING MAP OF THE TOWN OF MUKWONAGO ZONING CODE BY REZONING CERTAIN LANDS LOCATED IN PART OF THE NE ¼ OF SECTION 34 AND THE NW ¼ OF SECTION 35, T5N, R18E, TOWN OF MUKWONAGO, WAUKESHA COUNTY, WISCONSIN, FROM THE R-2 RESIDENTIAL DISTRICT TO THE R-3 RESIDENTIAL DISTRICT (ZT-1772)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Mukwonago Town Board on June 20, 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, Wisconsin Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the District Zoning Map for the Town of Mukwonago Zoning Code, adopted by the Town of Mukwonago on February 27, 2007, is hereby amended to rezone from the R-2 Residential District to the R-3 Residential District, certain lands located in part of the NE ¼ of Section 34 and the NW ¼ of Section 35, T5N, R18E, Town of Mukwonago, 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-1772, 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 Mukwonago.

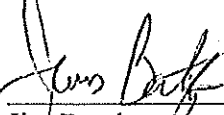
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

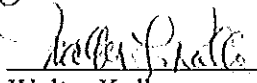
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

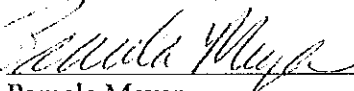
AMEND THE DISTRICT ZONING MAP OF THE TOWN OF MUKWONAGO ZONING CODE BY REZONING CERTAIN LANDS LOCATED IN PART OF THE NE ¼ OF SECTION 34 AND THE NW ¼ OF SECTION 35, T5N, R18E, TOWN OF MUKWONAGO, WAUKESHA COUNTY, WISCONSIN, FROM THE R-2 RESIDENTIAL DISTRICT TO THE R-3 RESIDENTIAL DISTRICT (ZT-1772)

Presented by:  
Land Use, Parks, and Environment Committee


  
James A. Heinrich, Chair

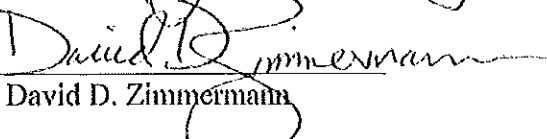
  
Jim Batzko

  
Walter Kolb

  
Pamela Meyer

  
Fritz Ruf

  
Thomas J. Schellinger

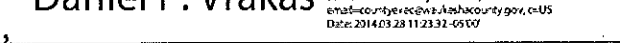
  
David D. Zimmermann

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

Date: 3/25/2014,   
Kathleen Novack, County Clerk

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

Approved: 3/28/2014  
Vetoed: \_\_\_\_\_

Date: 3/28/2014,   
Daniel P. Vrakas, County Executive

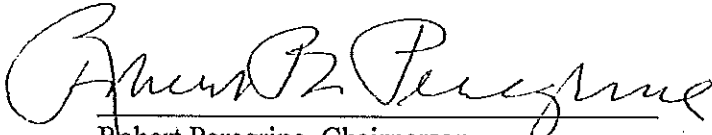
Digitally signed by Daniel P. Vrakas  
DN: cn=Daniel P. Vrakas, ou=Waukesha County Executive,  
email=countyexec@waukesha-county.gov, c=US  
Date: 2014.03.28 11:23:32 -0500


COMMISSION ACTION

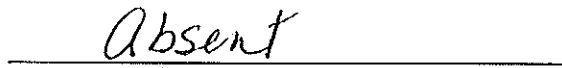
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Mukwonago Zoning Code hereby recommends approval of (ZT-1772 - William and Christine Bruss) in accordance with the attached "Staff Report and Recommendation".

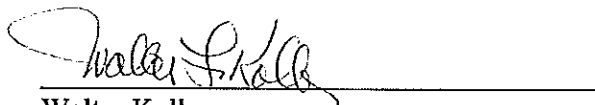
PARK AND PLANNING COMMISSION


February 20, 2014

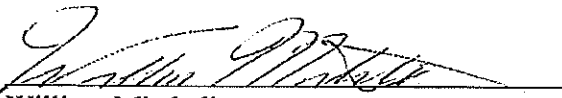
  
Robert Peregrine, Chairperson

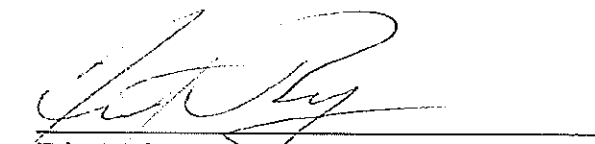
  
James Siepmann, Vice Chairperson

  
Patricia Haukohl

  
Walter Kolb

  
Gary Goodchild

  
William Mitchell

  
Fritz Ruf

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

**DATE:** February 20, 2014

**FILE NO.:** ZT-1772

**TAX KEY NOS.:** MUKT: 2005.270, 2005.274, 2005.275 and 2005.276

**OWNER/PETITIONER:** William and Christine Bruss  
S88W25707 Edgewood Ave.  
Mukwonago, WI 53149

**LOCATION:**

Part of Lots 6 & 7 Plat of Phantom Lake Park, Lots 13, 14 & 15 Resubdivision of Lot 8 & Parts of Lot 6 & 7 Phantom Lake Park, located in the E ½ of Section 34 and the W ½ of Section 35, T5N, R18E, Town of Mukwonago. More specifically, the property is located at W299 S10560 Phantom Woods Road with frontage on Lower Phantom Lake. The parcels encompass 29,184 square feet.

**PRESENT ZONING CLASSIFICATION:**

R-2 Residential District, C-1 Conservancy District and EFO Existing Floodplain Overlay(Town).

**PRESENT LAND USE:**

The property contains a two-story building with a dwelling unit on the second floor (former restaurant/bar on first floor), a one story cottage and two (2) sheds.

**PROPOSED ZONING:**

R-3 Residential District with C-1 Conservancy District and EFO Existing Floodplain Overlay Districts to remain unchanged (Town). County zoning to remain unchanged (R-2, C-1 and EFD).

**PROPOSED LAND USE:**

Combine multiple substandard lots of record into one parcel to allow future construction of a new single-family residence.

**PUBLIC HEARING DATE:**

May 2, 2012.

**PUBLIC REACTION:**

None.

**TOWN PLAN COMMISSION ACTION:**

On May 2, 2012, the Town Plan Commission unanimously recommended conditional approval of the rezoning request to the Town Board subject to the petitioner filing a deed restriction stipulating that any future development must follow the procedures, requirements and conditions relating to the R-3 district, including the special exception requirements.

**TOWN BOARD ACTION:**

On June 20, 2012, the Town Board approved the rezoning request in accordance with the Town Plan Commission's recommendation subject to the following condition:

- The rezoning of the subject property as specified herein and the amendment of the zoning map of the Town of Mukwonago is conditioned on the property owner recording a declaration of restrictions with Waukesha County stipulating that all development or redevelopment of the subject property shall comply with all applicable procedures, requirements, and conditions relating to the R-3 zoning district and all other applicable rules and regulations of the Town of Mukwonago and Waukesha County in effect at the time an application is submitted for review. Such declaration of restrictions shall be approved by the Town Planner in consultation with the Town Attorney.

The deed restriction has since been recorded.

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

The Town and County land use plans designate the lands to be rezoned in the Medium Density Residential land use category (6,000 to 19,999 square feet of area per dwelling unit).

**OTHER CONSIDERATIONS:**

The subject rezoning was approved by the Town of Mukwonago in 2012. The Town Planner recently requested that County Planning and Zoning Staff update the Town Zoning Map to incorporate a few recently approved rezoning file numbers by reference. County Planning and Zoning Staff notified the Town that our office had no record that the subject rezoning had been forwarded to our office for County approval. Accordingly, the Town has since transmitted the subject ordinance and related materials for consideration.

The property that is proposed to be rezoned encompasses four tax parcels that, together, front Lower Phantom Lake. Together, the four parcels comprise approximately 2/3 of an acre. Individually, the parcels do not comply with Town or County zoning standards relative to lot width, area, etc. The lands are located near the northerly terminus of Phantom Woods Road where the road terminates at the lake and contain a one-story residence and another structure that contains a second floor dwelling unit. The first floor of that structure previously housed a restaurant/bar but that use has now been discontinued. The commercial uses had operated under a County Conditional Use Permit, but that status terminated upon the sale of the property several years ago. The two principal structures on the site are both situated across internal parcel boundaries, which also makes the structures legal non-conforming. The larger building on site is partially within the 1% floodplain and both residential structures are non-conforming relative to floodplain setback.

The subject rezoning request pertains solely to the Town zoning designation. Specifically, the request is to rezone the upland portion of the subject site from the R-2 Residential District to the R-3 Residential District. The County Shoreland zoning designation for the same upland area is R-2 Residential District, while floodplain areas are zoned C-1 Conservancy District and EFD Existing Floodplain Development Overlay District. The existing Town EFO Existing Floodplain Overlay and C-1 Conservancy designations relative to areas of floodplain on site are proposed to remain unchanged. The rezone request was brought forward in order to allow for the four existing sub-standard lots of record to be combined into one parcel. Waukesha County conditionally approved a Certified Survey Map (CSM) in 2012 (see Exhibit "A") to allow for the combination of parcels, but, to date, the conditions have not been satisfied and the CSM has

not been recorded. The owner of the property would like to raze one or more of the existing buildings in the future and construct a new residence on the site. The Town's Land Division Ordinance requires a rezone to the R-3 District to allow for redevelopment of the subject lands. The Town's R-3 District was specifically created to provide for the redevelopment or development of substandard lots of record along the shoreline of the Phantom Lakes. The district requires combination of existing substandard parcels prior to the authorization of a new residence. The County Shoreland and Floodland Ordinance provisions would require that any new building to be constructed would need to meet required floodplain and other dimensional setbacks and standards. If application of said standards do not provide for a building envelope, new statutory provisions may provide for a new building to be located in the most conforming location possible.

The Town's R-3 District provides maximum building footprint and impervious surface limitations on an escalating scale based upon lot size. The district also requires that a vegetative buffer plan must be provided at the time that a building permit is sought. For lake lots, the district requires that buffers must be provided for 70 percent of the area between a point that is 15' lakeward of a proposed home and the high water mark of the lake. The buffer area is to have ground cover, shrubs and canopy vegetation and no impervious surfaces or decks are allowed within the designated buffer area.

**STAFF RECOMMENDATION:**

The Planning and Zoning Division Staff recommends **approval** of the requested rezoning, subject to the condition set forth in the Town of Mukwonago Ordinance No. 2012-O-6, which is attached.

The rezoning will allow for the merger of several severely substandard parcels, which will allow for continued residential use of the property while also allowing for the potential redevelopment of the subject lands in the future, as proposed by the owner.

Respectfully submitted,

*Jason Fruth*

Jason Fruth  
Planning and Zoning Manager

Enclosures: Exhibit "A", Town Ordinance, Map

N:\PRKANDLU\Planning and Zoning\Rezoning\Staff Reports\1772 Bruss mkt.doc

**EXHIBIT "A"**

RECEIVED

MAY 17 2012

DEPT. OF PARKS & LAND USE

**CERTIFIED SURVEY MAP NO. \_\_\_\_\_**

ALL OF LOTS 13, 14 & 15 OF RESUBDIVISION OF LOT 8, AND PART OF LOTS 6 & 7 OF PHANTOM LAKE PARK, ALL LOCATED IN THE SE. 1/4 OF THE NE. 1/4 OF SECTION 34 AND THE SW 1/4 OF THE NW 1/4 OF SECTION 35, T.5N., R.18E., TOWN OF MUKWONAGO, WAUKESHA COUNTY, WISCONSIN.

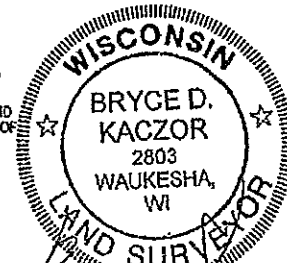
**LEGEND**

- CONC. MON. W/ BRASS CAP FND.
- 1" IRON PIPE FOUND (UNLESS OTHERWISE STATED)
- (SXXX'XX"XX"W) (XXX.XX') - RECORDED AS
- UTILITY POLE W/ GUY WIRE
- WELL
- MANHOLE
- CONCRETE
- ASPHALT
- WOOD DECK/PIER

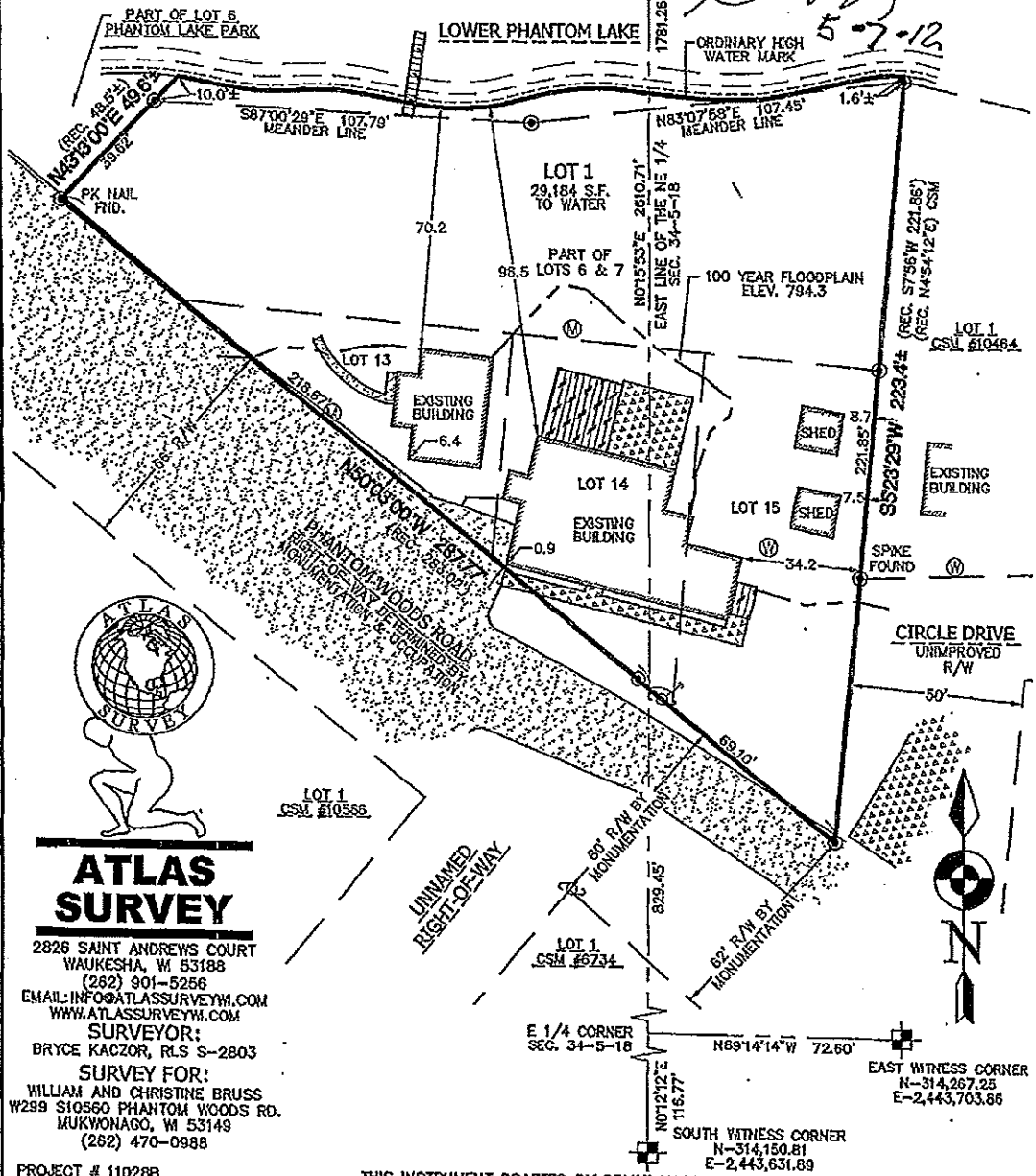
SCALE: 1" = 40'



BEARINGS ARE REFERENCED TO NAD27, WISCONSIN STATE PLANE, SOUTH ZONE, GRID NORTH ON THE EAST LINE OF THE NE 1/4 OF SECTION 34-05-18 AS N01°15'53"E.



S88°46'46"W 62.27'  
NE CORNER SEC. 34-5-18  
WEST WITNESS CORNER  
N-316,876.22  
E-2,443,557.86



**ATLAS SURVEY**

2826 SAINT ANDREWS COURT  
WAUKESHA, WI 53188  
(262) 901-5266  
EMAIL: INFO@ATLASSURVEY.M.COM  
WWW.ATLASSURVEY.M.COM  
**SURVEYOR:**  
BRYCE KACZOR, RLS S-2803  
**SURVEY FOR:**  
WILLIAM AND CHRISTINE BRUSS  
W299 S10560 PHANTOM WOODS RD.  
MUKWONAGO, WI 53149  
(262) 470-0988

PROJECT # 110288

THIS INSTRUMENT DRAFTED BY BRYCE KACZOR

SHEET 1 OF 6

## ORDINANCE NO. 2012-O-6

AN ORDINANCE TO REZONE A PORTION OF CERTAIN PARCELS IN THE NE 1/4 AND NW 1/4 OF SECTION 35, T5N R18E, IN THE TOWN OF MUKWONAGO AND TO AMEND THE ZONING MAP OF THE TOWN OF MUKWONAGO PURSUANT TO SECTION 82-51 OF THE ZONING ORDINANCE FOR THE TOWN OF MUKWONAGO

WHEREAS, Bill and Christine Bruss (herein referred to as "property owner") currently own real property in the Town of Mukwonago commonly referred to as W299 S10560 Phantom Woods Road, which is generally depicted in the attached Exhibit A (which is incorporated herein by reference) and currently identified as MUKT2005270, MUKT2005274, MUKT2005275, and MUKT2005276 (collectively referred to herein as the "subject property"); and

WHEREAS, the subject property is currently zoned R-2 Residential, C-1 Conservancy, and EFO Existing Floodplain Overlay; and

WHEREAS, the property owner has submitted a petition to the Town requesting that the area of the subject property currently classified as R-2 Residential be changed to R-3 Residential; and

WHEREAS, the rezoning petition has been submitted to the Town of Mukwonago Plan Commission for report and recommendation; and

WHEREAS, required public notice of the public hearing has been provided consistent with Section 62.23 of the Wisconsin Statutes and the Town's zoning code; and

WHEREAS, the Town of Mukwonago Town Board and the Town of Mukwonago Plan Commission conducted a joint public hearing on May 2, 2012; and

WHEREAS, the Town of Mukwonago Plan Commission has recommended to the Town of Mukwonago Town Board that said rezoning change be made under certain conditions; and

WHEREAS, The Town Board finds that the proposed zoning is consistent with the Town's comprehensive plan; and

WHEREAS, the Town of Mukwonago Town Board, after careful review and upon consideration of the recommendation of the Town of Mukwonago Plan Commission, having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration and having based its determination on the effect of granting of said rezoning on the health, safety, and welfare of the community, and the immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved, as well as the impact on the surrounding properties as to the noise, dust, smoke, odor and others, has hereby determined that the rezoning will not violate the spirit or intent the zoning ordinance for the Town of Mukwonago, will not be contrary to the public health, safety or general welfare of the Town of Mukwonago, will not be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a substantial adverse affect on the property values and general desirability of the neighborhood as long as the development is conducted pursuant to the following conditions and is in strict compliance with the same.

NOW, THEREFORE, the Town of Mukwonago Town Board, Waukesha County, Wisconsin, ordains as follows:



**SECTION 1: ZONING MAP CHANGE**

The area of the subject property currently classified as R-2 Residential is hereby changed to R-3 Residential, and the zoning map is hereby conditionally amended to incorporate such change.

**SECTION 2: CONDITIONS OF REZONING**

The rezoning of the subject property as specified herein and the amendment of the zoning map of the Town of Mukwonago is conditioned on the property owner recording a declaration of restrictions with Waukesha County stipulating that all development or redevelopment of the subject property shall comply with all applicable procedures, requirements, and conditions relating to the R-3 zoning district and all other applicable rules and regulations of the Town of Mukwonago and Waukesha County in effect at the time an application is submitted for review. Such declaration of restrictions shall be approved by the Town Planner in consultation with the Town Attorney.

**SECTION 3: CERTIFICATION**

Upon certification by the Town Clerk that the aforementioned condition has been satisfied, the Town Planner shall change the zoning classification of the subject properties on the Town of Mukwonago zoning map as indicated herein.

**SECTION 4: SEVERABILITY**

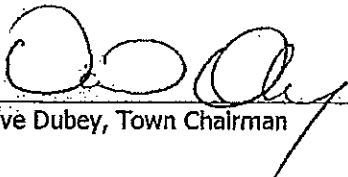
The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision,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

**SECTION 5: EFFECTIVE DATE**

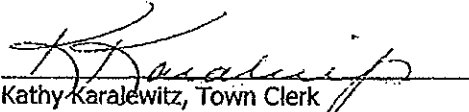
This ordinance shall be in full force and effect from and after its passage and posting or publication as provided by law subject to the condition stated in Section 2, and this ordinance is null and void and the current zoning shall be in effect with no further notice if such condition is not satisfied within one year of the date of this decision.

Approved this 20<sup>th</sup> day of June, 2012

TOWN OF MUKWONAGO

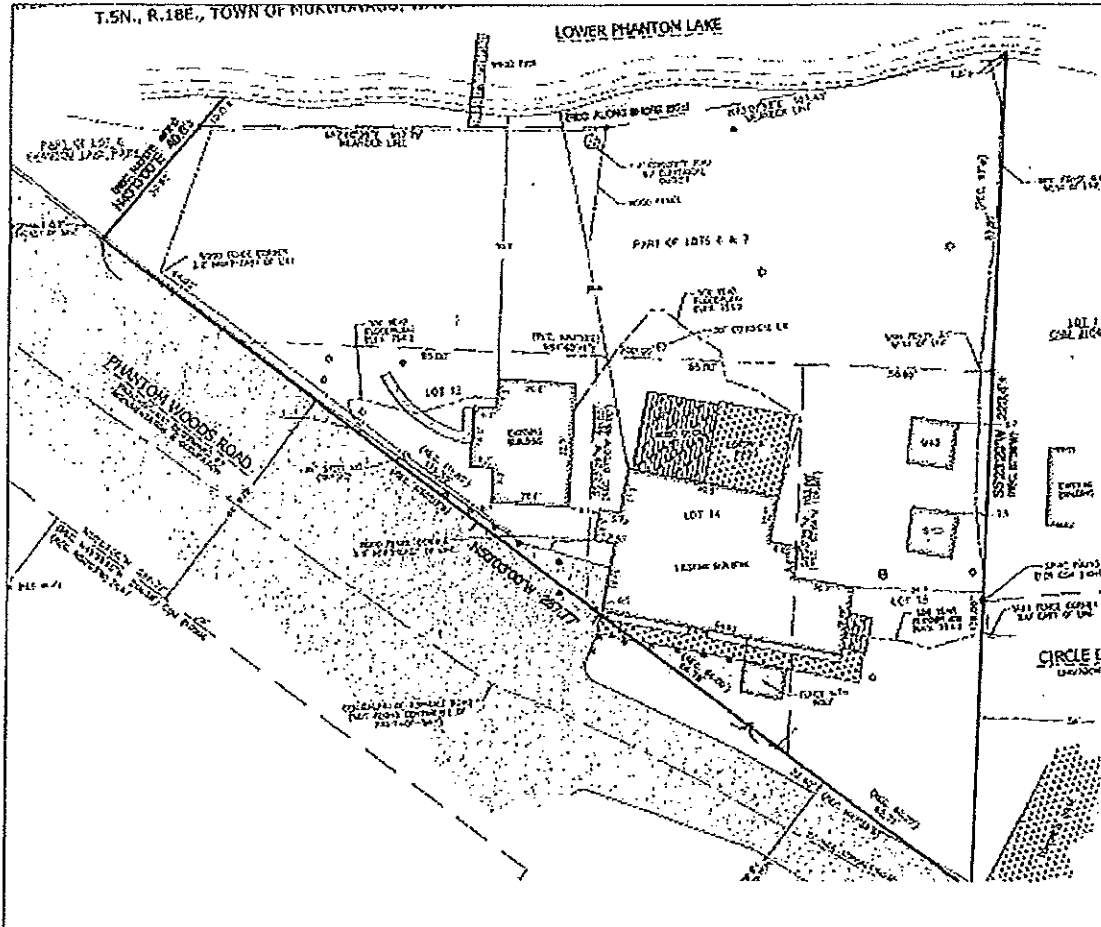
  
\_\_\_\_\_  
Dave Dubey, Town Chairman

ATTEST:

  
\_\_\_\_\_  
Kathy Karalewicz, Town Clerk

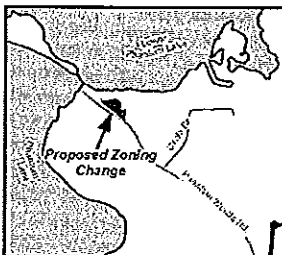
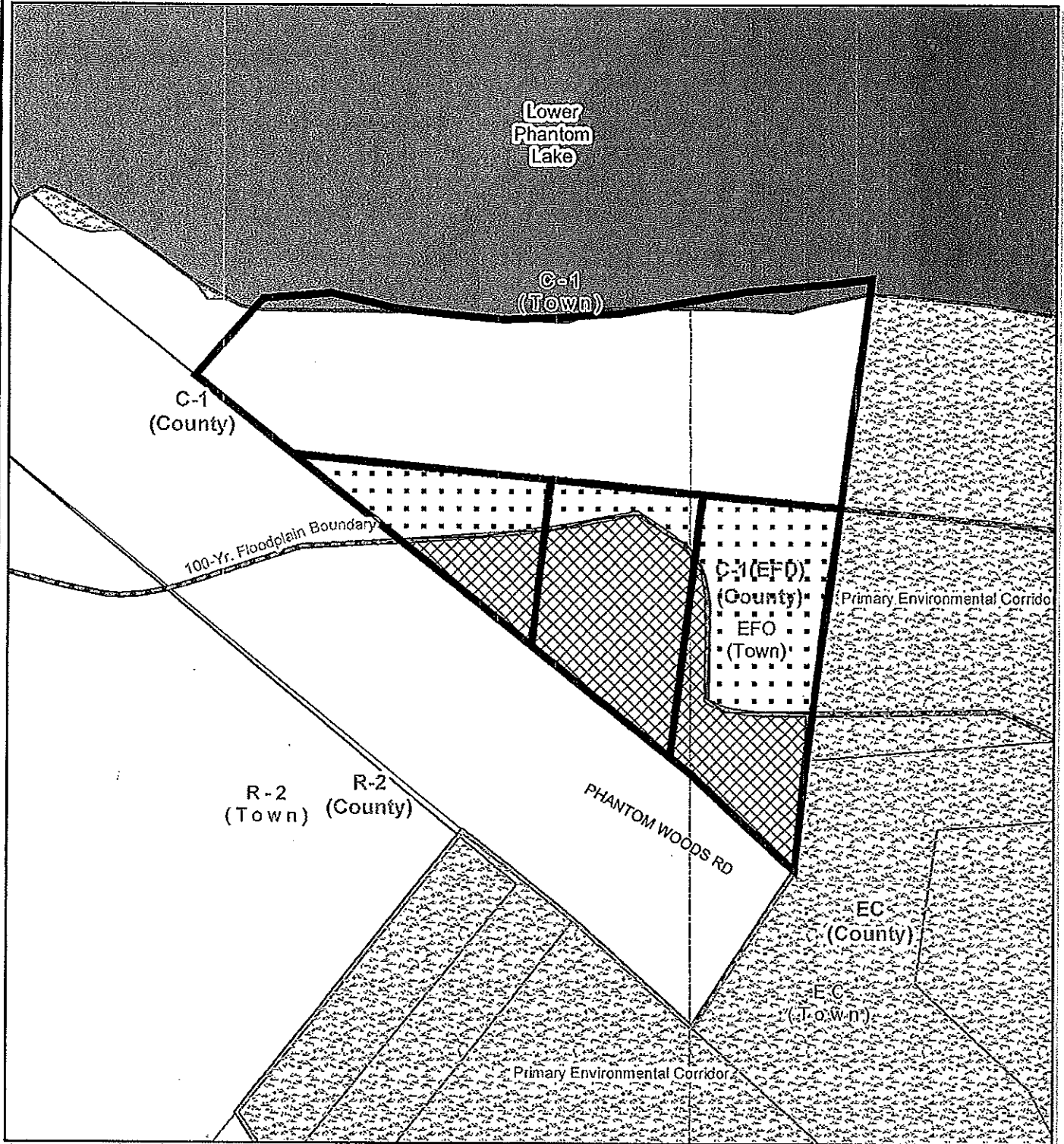
Published and posted this 28 day of June, 2012


**Exhibit A**  
**Subject Property Consisting of Four Adjoining Parcels**



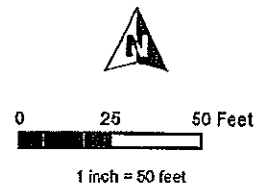
# ZONING MAP AMENDMENT

PART OF THE NE 1/4 OF SECTION 34 & NW 1/4 OF SECTION 35  
TOWN OF MUKWONAGO



 CONDITIONAL TOWN ZONING CHANGE FROM R-2 RESIDENTIAL DISTRICT TO R-3 RESIDENTIAL DISTRICT

FILE.....ZT-1772  
 DATE.....2/20/14  
 AREA OF CHANGE.....0.16 ACRES  
 TAX KEY NUMBER.....MUKT 2005.270, .274, .275, & .276



Prepared by the Waukesha County Department of Parks and Land Use

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-03/25/14

(ORD) NUMBER-1680098

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

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

TOTAL AYES-23

TOTAL NAYS-00

CARRIED \_\_\_\_\_

DEFEATED \_\_\_\_\_

UNANIMOUS ~~\_\_\_\_\_~~

TOTAL VOTES-23