

ENROLLED ORDINANCE 168-70

AMEND THE DISTRICT ZONING MAPS OF THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE AND THE WAUKESHA COUNTY ZONING CODE FOR THE TOWN OF GENESEE BY AMENDING CONDITIONS OF ENROLLED ORDINANCE 164-O-28 (SCZ-0819B) TO REZONE CERTAIN LANDS LOCATED IN PART OF THE SW ¼ OF SECTION 12, T6N, R18E, TOWN OF GENESEE, WAUKESHA COUNTY, WISCONSIN (SCZ-0819C)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Genesee Town Board on September 9, 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 Sections 59.69 and 59.692, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Waukesha County Shoreland and Floodland Protection Ordinance adopted on June 23, 1970, for the Town of Genesee, Waukesha County, Wisconsin, and the Waukesha County Zoning Code adopted by the Waukesha County Board of Supervisors, on February 26, 1959, are hereby amended to revise conditions of Enrolled Ordinance 164-O-28 (SCZ-0819B) to rezone certain lands located in part of the SW ¼ of Section 12, T6N, R18E, Town of Genesee, 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 (SCZ-0819C), is hereby approved subject to the following conditions:

1. The businesses permitted on the subject parcels shall be repair and service shops for automobiles, motorcycles, lawn mowers, and other small engines; garages for storage of vehicles used in conjunction with the operation of a permitted business; cabinet and furniture construction and assembly (woodworking); contractor’s offices and warehouse; indoor storage associated with an office use; professional offices and studios; light assembly; metal fabricating in conjunction with equipment repairs; welding; engine repairs; equipment painting; mini-storage facilities and any other similar use as may be allowed by the Town Plan Commission and the Waukesha County Zoning Administrator.
2. If any of the approved uses become a nuisance to the surrounding neighborhood or are detrimental to the natural resources, the Town and County Plan Commissions may proceed with termination of the affecting uses in accordance with the provisions set forth in the Waukesha County Zoning Code and the Waukesha County Shoreland and Floodland Protection Ordinance.
3. The existing duplexes and both associated garages shall be removed from the property prior to the construction of Building No. 7 for the mini-storage facility.
4. Subject to the subject property being combined into a single lot by Certified Survey Map, and further subject to satisfying any and all conditions that are imposed by the Town of Genesee in approving the Certified Survey Map (if it is approved), and satisfying all conditions that may be imposed by all other approving and objecting authorities (if it is approved), and further subject to recording the Certified Survey Map, as approved by the

Town of Genesee and the Waukesha County Department of Parks and Land Use – Planning and Zoning Division, in the office of the Waukesha County Register of Deeds, prior to the construction of Building No. 7 for the mini-storage facility.

5. Prior to March 1, 2014, unless extended by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff and the Town of Genesee Planner, the owner shall submit to and receive approval from the Town of Genesee Planner, a private driveway easement agreement to provide access for the property to the north, and upon approval, such easement shall be recorded in the office of the Waukesha County Register of Deeds.

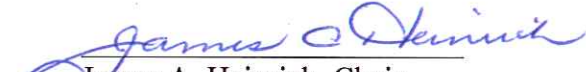
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Genesee.


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 MAPS OF THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE AND THE WAUKESHA COUNTY ZONING CODE FOR THE TOWN OF GENESEE BY AMENDING CONDITIONS OF ENROLLED ORDINANCE 164-O-28 (SCZ-0819B) TO REZONE CERTAIN LANDS LOCATED IN PART OF THE SW ¼ OF SECTION 12, T6N, R18E, TOWN OF GENESEE, WAUKESHA COUNTY, WISCONSIN (SCZ-0819C)

Presented by:
Land Use, Parks, and Environment Committee

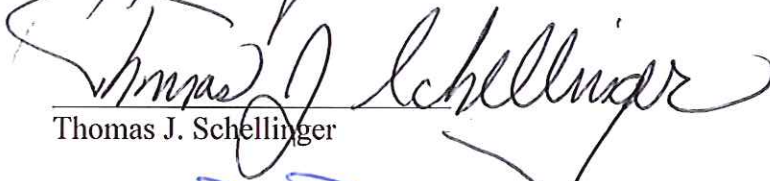

James A. Heinrich, Chair



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: 12/17/2013, 
Kathleen Novack, County Clerk

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

Approved: _____
Vetoed: _____
Date: 12/19/13, 
Daniel P. Vrakas, County Executive

COMMISSION ACTION

The Waukesha County Park and Planning Commission, after giving consideration to the subject matter of the Ordinance to amend the Waukesha County Shoreland and Floodland Protection Ordinance and the Waukesha County Zoning Code, hereby recommends approval of (SCZ-0819C Sunset Genesee, LLC) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

November 21, 2013




Bob Peregrine, Chairperson



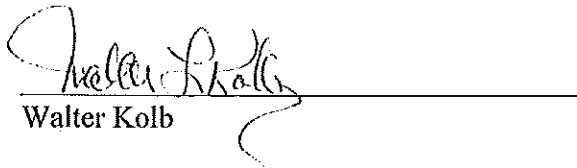
Jim Siepmann, Vice Chairperson

Absent

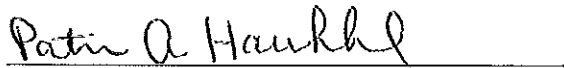
William Mitchell



Gary Goodchild



Walter Kolb



Pat Haukohl

Absent

Fritz Ruf

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

DATE: November 21, 2013

FILE NO: SCZ-0819C

OWNER: Sunset Genesee LLC
c/o James Derrick
21401 W. Orchard Drive
New Berlin, Wisconsin 53146

TAX KEY NUMBERS: GNT 1487.999.005, GNT 1487.996, and GNT 1487.997

LOCATION:

The subject property is approximately 16.54 acres in size and consists of the following parcels:

GNT 1487.999.005: Lot 3A, Certified Survey Map No. 8403, containing 15.72 acres.

GNT 1487.996: located at S30 W28538 Sunset Drive, containing approximately 0.25 acres.

GNT 1487.997: located at S30 W38602 Sunset Drive, containing approximately 0.57 acres.

All of the parcels are located in the SW ¼ of Section 12, T6N, R18E, Town of Genesee. More specifically, the property is located just north of the intersection of Sunset Drive (C.T.H. "DE") and the Wisconsin and Southern Railroad right-of-way.

PRESENT ZONING:

Conditional B-3 General Business District and C-1 Conservancy District. The current conditions that apply to the B-3 General Business District, which were set forth in a previous rezoning (File No. SCZ-0819B) that was approved in 2009, are as follows:

1. The businesses permitted on the subject parcels shall be limited to the repair and service shop for automobiles, motorcycles, lawn mowers, and other small engines; garages for the storage of vehicles used in conjunction with the operation of a permitted business; cabinet and furniture construction and assembly (woodworking); contractor's offices and associated warehouses; indoor storage associated with an office use; professional offices and studios; light assembly as deemed appropriate by the Town Plan Commission and Waukesha County Zoning Administrator; metal fabricating in conjunction with equipment repairs, welding, engine repairs, equipment painting, mini-storage facilities and any other similar use as may be allowed by the Town Plan Commission and Waukesha County Zoning Administrator.
2. A Deed Restriction shall be recorded in the Waukesha County Register of Deeds Office within six (6) months of passage of this Ordinance by the County Board of Supervisors stating that the rights granted herein are only transferable to any subsequent owner of the property upon approval of the Town of Genesee Board. Proof of filing shall be submitted to the Town Clerk and the Waukesha County Zoning Administrator prior to this Ordinance becoming effective. The legal description on the deed must accurately reflect the lands subject to this approval.

3. If any of the approved uses become a nuisance to the surrounding neighborhood or are detrimental to the natural resources, the Town and County Plan Commissions may proceed with the termination of the affecting uses in accordance with the provisions set forth in the Waukesha County Zoning Code and Waukesha County Shoreland and Floodland Protection Ordinance.
4. Prior to any of the existing uses being legalized, Site Plan and Plan of Operation Permits must be granted and all Environmental Health Division concerns must be addressed.
5. Any outdoor storage on the property must be specifically approved through the Site Plan/Plan of Operation process.
6. The existing duplexes must be removed within five (5) years of the effective date of this ordinance, as the multi-family residential use does not comply with the B-3 General Business District standards.
7. All areas delineated as wetland and approved by the Wisconsin Department of Natural Resources shall be rezoned to the C-1 Conservancy District.
8. The petitioner shall submit a private driveway easement agreement to provide access for the property to the north.

PRESENT LAND USE:

The 15.72 acre parcel (Tax Key No. GNT 1487.999.005) houses a mini-warehouse storage business (Sunset Storage LLC), which is operated by the property owner; a duplex rental residence and detached garage; and several farm buildings. One of the farm buildings is leased to an auto repair business (Crash Motor Sports) and another farm building is leased to an electrical contractor (Simons Electrical Systems). Tax Key No. GNT 1487.996 contains a duplex rental residence with an attached garage and Tax Key No. GNT 1487.997 contains a single-family rental residence.

PROPOSED ZONING:

Conditional B-3 General Business, with amended conditions, and C-1 Conservancy. There would be no changes to the zoning district boundaries. The requested amendment would modify the previous condition of rezoning (File No. SCZ-0819B) that required the existing duplexes to be removed within five (5) years of the effective date of the rezoning. Note: The previous conditional rezoning was adopted by the Waukesha County Board of Supervisors on July 28, 2009, and became effective shortly thereafter.

PROPOSED LAND USE:

Mr. Derrick is asking to retain the two existing duplexes beyond the five (5) year deadline imposed as a condition of the previous rezoning.

PUBLIC HEARING DATE:

August 26, 2013.

PUBLIC REACTION:

There were no public comments at the public hearing. However, the Town Planner and several Town Plan Commission members indicated they believed that allowing the two duplexes to remain until their removal is necessitated by construction of the proposed future mini-storage building, which will be located in the area currently occupied by the duplexes, would be in the best interests of the Town,

as the duplexes provide needed affordable housing, as well as additional security for the businesses on the property.

TOWN PLAN COMMISSION AND TOWN BOARD ACTION:

On August 26, 2013, the Town Plan Commission recommended approval of amendments to the conditions of the previous rezoning (File No. SCZ-0819B). On September 9, 2013, the Town Board approved amendments to the previous rezoning, as recommended by the Town Plan Commission. However, the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff asked the Town to reconsider their approval and remove the requirement for the recordation of a Deed Restriction indicating that the rights granted by the rezoning are only transferable to any subsequent owner of the property upon approval of the Town of Genesee Board, which they did on October 14, 2013. The Town Board's Certified Resolution 13-07R, which sets forth the amended conditions, as approved by the Town Board on October 14, 2013, is attached as Exhibit "A".

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

The property is designated as Commercial and Other Open Lands to be Preserved on the Town of Genesee Land Use Plan and the Comprehensive Development Plan for Waukesha County. The continued use of the property for principally commercial uses is in conformance with both plans. The continued use of the existing residences allows for legal non-conforming uses to also remain.

STAFF ANALYSIS:

The subject property is part of a former dairy farm, located north of Sunset Drive (C.T.H. "DE") and south of the Glacial Drumlin State Trail, with the Wisconsin and Southern Railroad right-of-way cutting across the southeast corner. The property is bordered on the east by a Town park. The other surrounding properties are rural residential lots. The northwestern portion of the property, approximately 5 acres, is zoned C-1 Conservancy. That area is undeveloped and will remain so.

The developed portion of the property, which has contained various businesses over time, was conditionally rezoned from the A-B Agricultural Business District to the B-3 General Business District in 1987 (File No. CZ-0819). The conditions of rezoning were amended in 2008 (File No. CZ-0819A), to allow the addition of a mini-storage facility. The conditions were amended again in 2009 (File No. CZ-0819B), to allow several additional business uses.

One of the conditions placed on the 2009 zoning amendment (Condition No. 6) required the removal of the two existing duplexes within five (5) years of the effective date of the zoning amendment. This condition was placed on the rezoning because multi-family residential use does not comply with the B-3 General Business District standards and, at the time, the petitioner indicated his plan was to remove the two duplexes, which are located in an area where a future mini-storage building (Building No. 7) is proposed, within five (5) years, so he could combine all of the parcels into one lot and construct the proposed future mini-storage building. However, due to the economic downturn, he has not been able to move forward with his plans for the additional mini-storage building and would like to be able to retain the two duplexes until such time as he can proceed with the construction of the proposed future mini-storage building.

The amendments approved by the Town Board will allow the existing duplexes and both garages to remain until such time as the petitioner is ready to proceed with construction of the proposed future Building No. 7 for the mini-storage facility. The Town of Genesee also added a condition requiring

that the subject property must be combined into a single lot by a Certified Survey Map, prior to the construction of the proposed future Building No. 7 for the mini-storage facility.

In addition to the above-noted amendments, the Town of Genesee has also proposed the elimination of four conditions of approval. Those conditions are as follows:

Condition No. 2, which required the recordation of a Deed Restriction indicating that the rights granted by the rezoning are only transferable to any subsequent owner of the property upon approval of the Town of Genesee Board. This condition was eliminated at the request of the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, who recommended the condition, which had carried forward from a long prior rezoning approval, was no longer appropriate given the level of investment that has now been made relative to the storage facility use.

Condition No. 4, which addressed the legalization of the other existing uses on the property by the issuance of Site Plan and Plan of Operation Permits after all Environmental Health Division concerns were addressed. This condition was eliminated because the other existing uses have all received Site Plan and Plan of Operation approvals.

Condition No. 5, which required that any outdoor storage on the property must be specifically approved through the Site Plan/Plan of Operation process. This condition was eliminated because this is automatically dealt with through the Site Plan/Plan of Operation process.

Condition No. 7, which required that all areas delineated as wetland shall be rezoned to the C-1 Conservancy District. This condition was eliminated because it has already occurred.

STAFF RECOMMENDATION:

The Planning and Zoning Division Staff recommends **approval** of an amendment to revise the conditions of the previous rezoning, as set forth by the Genesee Town Board, but with the modifications noted below (modifications to the conditions set forth by the Town of Genesee are shown with additions in **bold type** and deletions as ~~strike-throughs~~).

1. The businesses permitted on the subject parcels shall be repair and service shops for automobiles, motorcycles, lawn mowers, and other small engines; garages for storage of vehicles used in conjunction with the operation of a permitted business; cabinet and furniture construction and assembly (woodworking); contractor's offices and warehouse; indoor storage associated with an office use; professional offices and studios; light assembly; metal fabricating in conjunction with equipment repairs; welding; engine repairs; **and equipment painting**; mini-storage facilities and any other similar use as may be allowed by the Town Plan Commission and ~~the Waukesha County Zoning Administrator~~.
2. If any of the ~~proposed~~ **approved** uses become a nuisance to the surrounding neighborhood or are detrimental to the natural resources, the Town and County Plan Commissions may proceed with termination of the affecting uses in accordance with the provisions set forth in the Waukesha County Zoning Code and the Waukesha County Shoreland and Floodland Protection Ordinance.
3. The existing duplexes and both **associated** garages shall be removed from the property ~~as further described within the Town of Genesee Plan Commission conditions of approval of the Site Plan and Plan of Operation dated on or about May 27, 2009, within the times described therein;~~

~~subject to such modifications as may be made from time to time by the Town of Genesee Plan Commission, prior to the construction of Building No. 7 for the mini-storage facility.~~

4. Subject to the subject property being combined into a single lot by Certified Survey Map, and further subject to satisfying any and all conditions that are imposed by the Town of Genesee in approving the Certified Survey Map (if it is approved), and satisfying all conditions that may be imposed by all other approving and objecting authorities (if it is approved), and further subject to recording the Certified Survey Map, as approved by the Town of Genesee and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division, in the office of the Waukesha County Register of Deeds, prior to ~~this rezoning ordinance taking effect~~ the construction of Building No. 7 for the mini-storage facility.
5. ~~Prior to March 1, 2014, unless extended by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff and the Town of Genesee Planner, the~~ The owner shall submit to and receive approval from the Town of Genesee Planner, a private driveway easement agreement to provide access for the property to the north, and upon approval, such easement shall be recorded in the office of the Waukesha County Register of Deeds, ~~prior to this rezoning ordinance taking effect.~~

The amended conditions of rezoning will allow the continued commercial use of the property, in conformance with the Town of Genesee Land Use Plan and the Comprehensive Development Plan for Waukesha County. Permitting the existing duplexes to remain until their removal is necessitated by the construction of the proposed future mini-storage building will provide for the continued use of existing legal non-conforming housing stock, as well as additional security for the businesses on the property.

Respectfully submitted,

Mary Finet

Mary E. Finet
Senior Land Use Specialist

MEF:kb

Attachments: Exhibit "A" and Map

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EXHIBIT "A"

RESOLUTION 13-07R

TOWN BOARD OF THE TOWN OF GENESEE

A Municipal Corporation

WHEREAS, a Zoning Amendment request was filed by James Derrick to amend the Conditions of the Conditional B-3 General Business District, as it pertains to the following described properties:

GNT 1487.999.005: Lot 3A, Certified Survey Map No. 8403, being a part of the SW ¼ and SE ¼ of Section 12, T6N, R18E, Town of Genesee, containing approximately 15.72 acres;

GNT 1487.996: Being a part of the SW ¼ of Section 12, T6N, R18E, Town of Genesee, containing approximately 0.44 acres; and

GNT 1487.997: Being a part of the E ½ of the SW ¼ of Section 12, T6N, R18E, Town of Genesee, containing approximately 0.85 acres.

The petitioner is proposing to amend the previously imposed conditions of Enrolled Ordinance 164-28 to allow additional time to remove the existing duplexes.

WHEREAS, A Joint Public Hearing was held by the Town of Genesee Plan Commission and the Waukesha County Department of Parks and Land Use on August 27, 2013 at the Genesee Town Hall located at S43 W31391 Highway 83 Genesee Depot, Wisconsin to consider said request: and

WHEREAS, the Town of Genesee Plan Commission held a public meeting to discuss said request. After discussion in regards to said request, by motion, properly made and seconded, the Genesee Town Plan Commission voted to recommend to the Town Board an approval of the request.

WHEREAS, the Genesee Town Board held a public meeting on Monday, September 9, 2013 to discuss said request and approved a resolution, which approved the zoning amendment subject to several conditions: and

EXHIBIT "A"

WHEREAS, following the Town Board making its initial recommendation in this matter on September 9, 2013, the Town Board has since been asked by Waukesha County to amend its original approval, to remove the requirement of a deed restriction: and

WHEREAS, The Genesee Town Board held a public meeting on Monday, October 14, 2013, to discuss amending the original approval, to remove the requirement of the filing of a Deed Restriction,

BASED UPON THE SAME, IT IS HEREBY RESOLVED BY THE TOWN BOARD OF THE TOWN OF GENESEE, it being the Town affected by said proposed zoning amendment, THAT, the Resolution of the Town Board, Resolution Number 13-06, dated September 9, 2013, is hereby rescinded; and

BE IT FURTHER RESOLVED, that the request of the petitioner be approved subject to the following conditions:

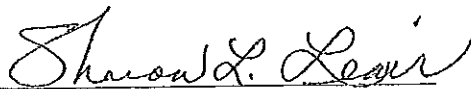
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2. If any of the proposed uses become a nuisance to the surrounding neighborhood or are detrimental to the natural resources, the Town and County Plan Commissions may proceed with termination of the affecting uses in accordance with the provisions set forth in the Waukesha County Zoning Code and the Waukesha County Shoreland and Floodland Protection Ordinance.
3. The existing duplexes and both garages shall be removed from the property as further described within the Town of Genesee Plan Commission conditions of Approval of the Site Plan and Plan of Operation dated on or about May 27, 2009, within the times described therein, subject to such modifications as may be made from time to time by the Town of Genesee Plan Commission.

EXHIBIT "A"

- 4 Subject to the subject property being combined into a single lot by certified survey Map, and further subject to satisfying any and all conditions that are imposed by the Town of Genesee in approving the Certified Survey Map (if it is approved), and satisfying all conditions that may be imposed by all other approving and objecting authorities (if it is approved), and further subject to recording the Certified Survey Map as approved by the Town of Genesee in the office of the Waukesha County Register of Deeds , prior to this rezoning ordinance taking effect.
- 5 The owner shall submit to and receive approval from the Town of Genesee Town Planner, a private driveway easement agreement to provide access for the property to the north, and upon approval such easement agreement shall be recorded in the office of the Waukesha County Register of Deeds, prior to this rezoning ordinance taking effect.

AND FURTHER BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF GENESEE, that the Town of Genesee does hereby give notice to the County that it approves the zoning amendment request of James Derrick subject to the forgoing conditions.

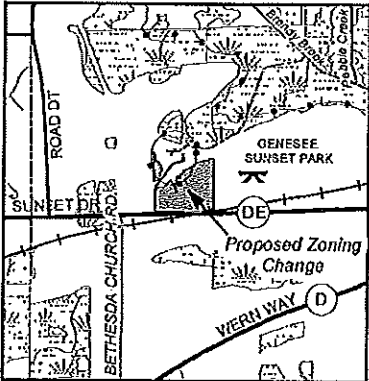
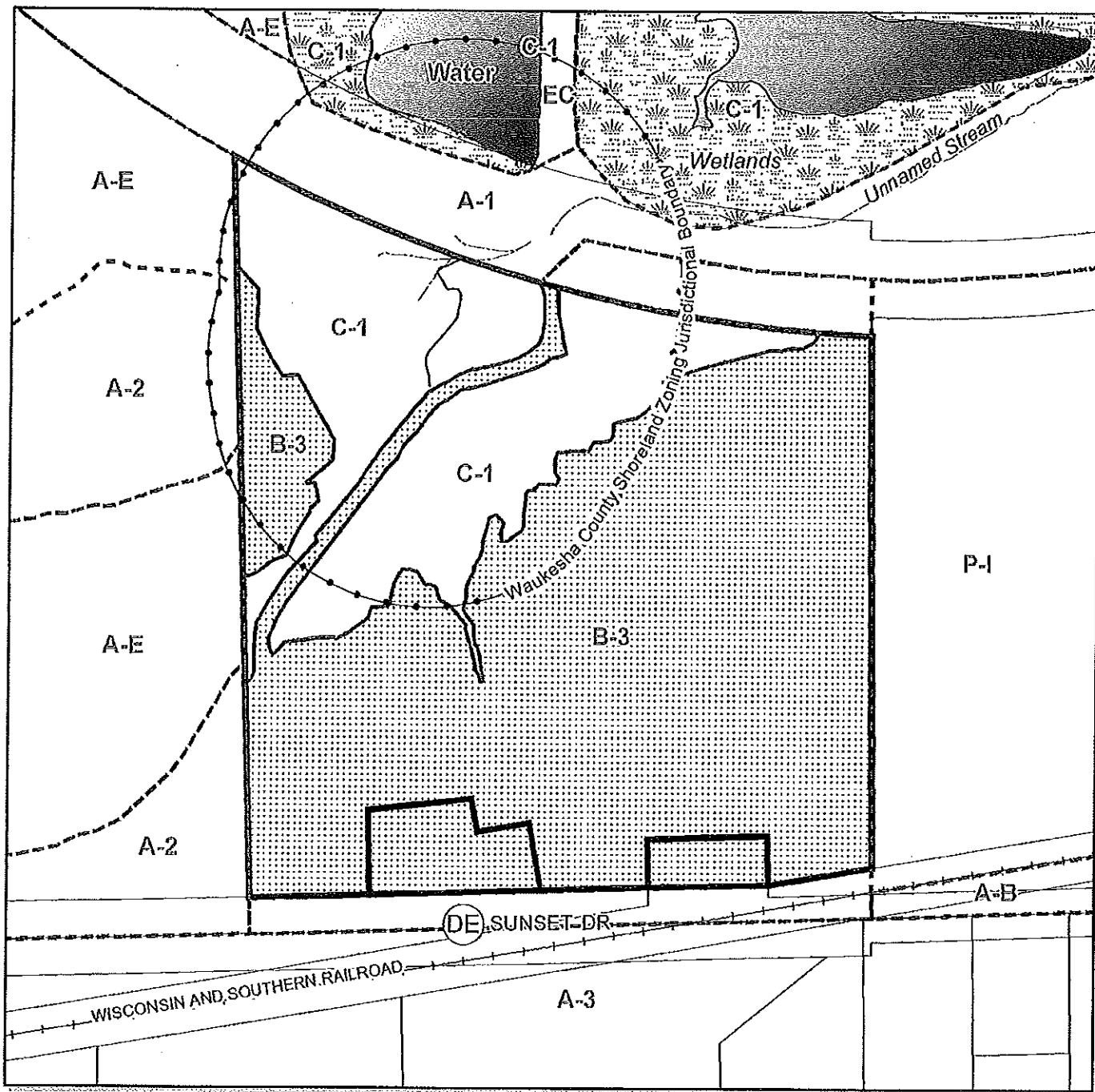
Dated this 14th day of October, 2013


Sharon L. Leair, Chairman


Deidre Bushey, Deputy Clerk

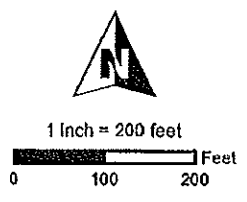
ZONING MAP AMENDMENT

PART OF THE SW 1/4 OF SECTION 12
TOWN OF GENESEE



 AMEND CONDITIONS OF REZONE SCZ-819B

FILE.....SCZ-819C
 DATE.....11-21-13
 AREA OF CHANGE.....7.56 ACRES
 TAX KEY NUMBERS.....GNT 1487.999.005, GNT 1487.996, GNT 1487.997



Prepared by the Waukesha County Department of Parks and Land Use

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-12/17/13

(ORD) NUMBER-1680070

- | | |
|--------------------------|--------------------------|
| 1 C. SLATTERY..... | 2 D. Zimmermann.....AYE |
| 3 R. MORRIS.....AYE | 4 J. BATZKO.....AYE |
| 5 J. BRANDTJEN.....AYE | 6 J. JESKEWITZ..... |
| 7 J. GRANT.....AYE | 8 P. HAUKOHL.....AYE |
| 9 J. HEINRICH.....AYE | 10 D. SWAN.....AYE |
| 11 F. RUF.....AYE | 12 P. WOLFF.....AYE |
| 13 P. DECKER.....AYE | 14 P. MEYER.....AYE |
| 15 W. KOLB.....AYE | 16 M. CROWLEY.....AYE |
| 17 D. PAULSON.....AYE | 18 L. NELSON.....AYE |
| 19 C. CUMMINGS.....AYE | 20 T. SCHELLINGER....AYE |
| 21 W. ZABOROWSKI.....AYE | 22 P. JASKE.....AYE |
| 23 K. HAMMITT.....AYE | 24 D. DRAEGER.....AYE |
| 25 G. YERKE..... | |

TOTAL AYES-22

TOTAL NAYS-00

CARRIED _____

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-22