

ENROLLED ORDINANCE 174-054

AMEND THE DISTRICT ZONING MAP OF THE TOWN OF GENESEE ZONING CODE BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NE ¼ OF SECTION 3, T6N, R18E, TOWN OF GENESEE, WAUKESHA COUNTY, WISCONSIN, FROM THE A-5 MINI FARM DISTRICT TO THE R-1 RESIDENTIAL DISTRICT (RZ46)

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 August 12, 2019; and

WHEREAS, the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Section 60.62, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the District Zoning Map for the Town of Genesee Zoning Code, adopted by the Town of Genesee on July 23, 2015, is hereby amended to conditionally rezone from the A-5 Mini Farm District to the R-1 Residential District, certain lands located in part of the NE ¼ of Section 3, 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 RZ46, is hereby approved, subject to the conditions of Town Ordinance No. 19-5.

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.

COMMISSION ACTION

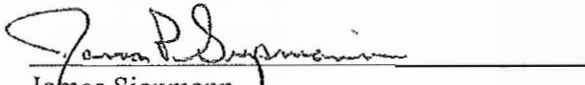
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Genesee Zoning Ordinance hereby recommends approval of **RZ46 (Legend of Brandybrook Estates, LLC)** in accordance with the attached "Staff Report and Recommendation".

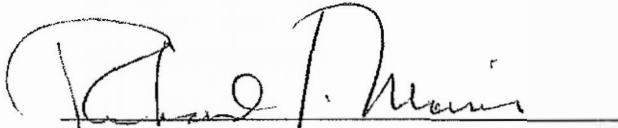
PARK AND PLANNING COMMISSION

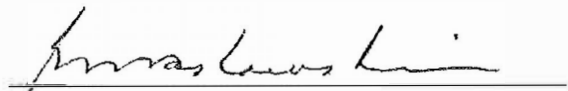
September 19, 2019


Robert Peregrine, Chairperson

Absent
William Mitchell, Vice Chairperson


James Siepmann


Richard Morris


William Maslowski


Thomas Michalski

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

DATE: September 19, 2019

FILE NO.: RZ46

TAX KEY NO.: GNT 1449.988.001

PETITIONER AND OWNER:

The Legend of Brandybrook Estates, LLC.
N8 W22520-L Johnson Drive
Waukesha, WI 53186

LOCATION:

Lot 2 Certified Survey Map No. 5162, part of the NE ¼ of Section 3, T6N, R18E, Town of Genesee. More specifically, the property is located at W304 S1806 Brandybrook Road, containing approximately 15.1 acres.

PRESENT ZONING CLASSIFICATION:

A-5 Mini Farm District.

PRESENT LAND USE:

Single-family residence with a detached accessory building.

PROPOSED ZONING:

R-1 Residential District.

PROPOSED LAND USE:

Eleven lot residential development.

PUBLIC HEARING DATE:

June 24, 2019.

PUBLIC REACTION:

Many people spoke in favor of the rezone for the following reasons:

- Employment opportunities
- Increase in tax base
- Increase in funding for schools and school district
- Increase in property values
- Family community that the Legend provides

Many people spoke in opposition to the rezone for the following reasons:

- Concerns regarding traffic, lights and noise
- Opposition to change of rural community
- Septic system concerns

- Timing, road use and future development concerns
- Question as to whether road entrance could be changed

The development team responded to several questions and concerns. They indicated that they are proposing landscaping to screen the development and address concerns about lights and noise. The project engineer responded that the location of the proposed private road intersection cannot be moved.

TOWN PLAN COMMISSION:

On July 22, 2019, the Town Plan Commission, unanimously recommended approval of the rezoning request with conditions.

TOWN BOARD ACTION

On August 12, 2019, the Town Board approved the rezoning request by a vote of 4 to 1, as conditioned.

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

The local and county plan designations for the areas of the property outside of the environmental corridor were amended in 2019 to the Low Density Residential category (20,000 square feet to 1.4 acres per dwelling unit) category, subject to landscape buffers being provided along the north side of the property. A small area remains planned in the Primary Environmental Corridor category, although it is possible that an in-field determination will reduce the acreage in that category. The proposed density of more than one dwelling unit per acre complies with plan requirements. The proposal to develop the site utilizing conservation design techniques also furthers plan recommendations for clustered development in rural settings.

OTHER CONSIDERATIONS:

The subject 15-acre property is located immediately to the north of the Legend at Brandybrook golf course. The property abuts the Village of Wales. The property currently contains a single-family residence that will be retained and a large outbuilding that will be razed. There are two golf course-oriented developments within the immediate area. Brandybrook subdivision to the southwest contains single-family homes on lots that are generally approximately $\frac{3}{4}$ acres in size. Regency Fairway Villas are located to the northwest of the property. To the north and east of the property, lot sizes become larger and the setting is more rural residential with parcels generally ranging from three to twenty acres.

The proposal is to rezone the property from a five-acre minimum lot size district to a category that allows for a density of just under one acre per dwelling unit with a conservation design, contingent upon town approval of a planned unit development. The submitted concept plan (see Exhibit "A") shows eleven single-family condominium lots with substantial open space along Brandybrook Road and on the far east side of the property. Septic systems for the smaller proposed condominium lots are proposed to be located within open space areas near Brandybrook Road. The road is proposed to be private. The concept plan shows a cart path connection from the proposed development to the golf course.

The town and county plan commissions carefully considered neighborhood input during the deliberations for the plan amendment for this property early this year. Both entities reviewed a concept plan that was part of the application package and both ultimately approved a land use plan change. The rezoning proposal brings forward a concept plan that is very similar to the concept submitted as part of the plan amendment request. The main difference is that the current proposal contains one less lot than what was originally proposed.

The town has conditioned their approval upon a number of conditions, as detailed in the attached town ordinance no. 19-5. The conditions require that the development contain no more than eleven units and that future development must be consistent with the presented concept plan. The conditions also require town review and approval of a planned unit development and condominium plat.

STAFF RECOMMENDATION

It is the opinion of the Planning and Zoning Division Staff that the request be **approved** as conditioned by Town of Genesee Ordinance No. 19-5. The rezoning is consistent with land use plan recommendations and brings forward considerable open space in a unified layout. The Planned Unit Development and condominium plat review processes will allow the town to consider appropriate landscape plan treatments as pledged by the developer and conditioned by the county previously as part of the land use plan amendment for the property.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning and Zoning Manager

Attachments: Town Ordinance No. 19-5
Exhibit "A"
Map

ORDINANCE 19-5

**An Ordinance to amend the Zoning Map of the Town of Genesee from A-5
Mini-Farm District to R-1 Residential District on lands located in the NE ¼ of
Section 3, T6N, R18E, Town of Genesee, Waukesha County Wisconsin**

WHEREAS, a petition has been filed by The Legend of Brandybrook Estates, LLC, (“Petitioner”) the owner of certain lands in the Town of Genesee, to rezone certain property located generally at W304 S1806 Brandybrook Road, containing approximately 15.1 acres, as further described in Exhibit A attached hereto and incorporated herein (“Subject Property”); and

WHEREAS, said rezoning petition was submitted to rezone the Subject Property from A-5 Mini-Farm District to R-1 Residential District; and

WHEREAS, the Petitioner has supplied all required data pursuant to Section 101(A)(2) of the Town of Genesee Zoning Code, and the Town Clerk properly referred the matter to the Town of Genesee Plan Commission pursuant to Section 101(A)(3) of the Town of Genesee Zoning Code; and

WHEREAS, a public hearing was conducted by the Town Board of the Town of Genesee on June 24, 2019 as required by Section 101(A)(4) of the Town of Genesee Zoning Code, upon due notice as required by Section 102(A) of the Town of Genesee Zoning Code; and

WHEREAS, the Town Board finds that this change to the Town Zoning Code is not a down zoning ordinance because it does not decrease the development density of land and it does not reduce the permitted uses of land, and therefore the super majority requirement of Section 66.10015, Wisconsin Statutes, does not apply to this ordinance; and

WHEREAS, the Town Board of the Town of Genesee 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 the granting of such 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 noise, dust, smoke and odor, and others, hereby determine that the rezoning will not violate the spirit or intent of the Zoning Code for the Town of Genesee will not be contrary to the public health, safety or general welfare of the Town of Genesee, will not be hazardous, harmful, noxious, offensive and will not for any other reason cause a substantial adverse effect on the property values and general desirability of the neighborhood as long as the operation is conducted pursuant to the following conditions and in strict compliance with the same and the rezoning is consistent with the Town of Genesee Comprehensive Plan.

NOW, THEREFORE, the Town Board of Genesee, Waukesha County, Wisconsin, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1:

The Subject Property is hereby conditionally rezoned to R-1 Residential District, and the Zoning Map of the Town of Genesee is hereby conditionally amended to change the zoning of the Subject Property from A-5 Mini-Farm District to the R-1 Residential District, if the conditions stated in Section 2 of this ordinance are complied with.

Section 2:

The above rezoning and Zoning Map amendment is conditioned upon the following conditions, which must be complied with or this ordinance is null and void:

1. **Maximum Dwelling Units.** There shall be a maximum of eleven (11) dwelling units in substantial conformance with the concept plan submitted by the Petitioner dated 06-03-2019.
2. **Land Division.** Subject to the Subject Property being divided by condominium plat in the manner described at the public hearing of June 24, 2019, and further subject to satisfying any and all conditions that are imposed by the Town in approving the condominium plat (if it is approved), and satisfying all conditions that may be imposed by the Town of Genesee and all other approving and objecting authorities in approving the final condominium plat (if it is approved), and further subject to recording the final condominium plat as approved by the Town of Genesee (if it is approved) in the office of the Waukesha County Register of Deeds.
3. **Planned Unit Development.** Subject to the Subject Property being granted a Planned Unit Development (PUD) conditional use permit pursuant to Section 40(B)(30) of the Town of Genesee Zoning Code to allow increased flexibility in lot size, offset, setback, height, building location, and floor area ratio requirements, and satisfying all conditions that may be imposed by the Town in granting such conditional use permit (if it is granted).
4. **Condominium.** Subject to the Subject Property owner submitting a condominium declaration and condominium plat to regulate the Subject Lands in the manner described at the public hearing, and further subject to satisfying any and all conditions that are imposed by the Town in approving the condominium declaration and condominium plat (if it is approved), and satisfying all conditions that may be imposed by the Town and all other approving and objecting authorities in approving the condominium declaration and condominium plat (if they are approved), and further subject to recording the condominium plat as approved by the Town (if it is approved) in the office of the Waukesha County Register of Deeds.
5. **Regulatory Compliance.** Subject to the Petitioner and owner fully complying with all Town of Genesee, Waukesha County, State of Wisconsin and federal government codes, ordinances, statutes, rules, regulations and orders regarding the premises as determined by Town staff, including but not limited to the Waukesha County Stormwater Management and Sediment and Erosion Control Ordinance.
6. **Intersection Improvements.** The Petitioner shall comply with all requirements of the Town of Genesee Public Works Superintendent and Town Engineer regarding all necessary improvements to the intersection of the Proposed Driveway and Brandybrook Road.

7. **Financial Guarantee and Agreement.** Subject to the Petitioner submitting to the Town Clerk and receiving approval as to form from the Town Attorney and as to amount from the Town Engineer, a letter of credit or cash and subject to the Petitioner submitting to and receiving from the Town Attorney and the Town Engineer, approval of a Developer's Agreement for the improvements (including all public, private and site development improvements), prior to commencing construction of any improvement, whether public or private, or site development or approval of the final plat or certified survey map, whichever is earlier.
8. **Professional Fees.** Petitioner shall, on demand, reimburse the Town for all costs and expenses of any type that the Town incurs in connection with this rezoning petition, including the cost of professional services incurred by the Town (including engineering, legal, planning and other consulting fees) for the review and preparation of required documents or attendance at meetings or other related professional services for this application, as well as to enforce the conditions in this conditional rezoning ordinance due to a violation of these conditions.
9. **Payment of Charges.** Any unpaid bills owed to the Town by the owner of subject property or his or her tenants, operators or occupants, for reimbursement of professional fees (as described above); or for personal property taxes; or for real property taxes; or for licenses, permit fees or any other fees owed to the Town; shall be placed upon the tax roll for the subject property if not paid within thirty (30) days of billing by the Town, pursuant to Section 66.0627, Wisconsin Statutes. Such unpaid bills also constitute a breach of the requirements of this conditional rezoning ordinance, that is subject to all remedies available to the Town, including possible cause for termination of the conditional rezoning ordinance.
10. **Subject to Acceptance.** Subject to the Petitioner acknowledging in writing that they have received a copy of this conditional approval, that they understand and accept the same, and that upon failure to satisfy these conditions this approval is void, and the same is deemed to not have been approved, and the Petitioner will therefore need to re-commence the application process.
11. **Three Years to Satisfy Conditions.** Subject to the Petitioner satisfying all of the aforementioned conditions within three years of the Town Board adopting this conditional rezoning ordinance, unless extended by the Town Board.

Section 3:

The Town Engineer is hereby authorized and directed to note this rezoning on the Official Zoning Map of the Town of Genesee upon successful development of the subject property and satisfaction of all conditions in Section 2 of this ordinance.

Section 4:

The subject property owner is hereby put on notice that the Town of Genesee may rezone the lands or portions thereof subject to this conditional rezoning ordinance to R-1 Residential District if the conditions of this ordinance are not fully complied with.

Section 5: 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 as to those terms that conflict.

Section 6: Effective Date.

This ordinance shall be in full force and effect from and after its passage and publication upon approval of the Waukesha County Board as required by Section 101(A)(7) of the Town of Genesee Zoning Code and subject to the conditions stated in Section 2, and this ordinance is null and void and original district zoning shall be in effect with no further notice if said conditions are not complied with on the terms and conditions stated herein.

Passed and adopted this 12th day of August, 2019.

BY THE TOWN BOARD OF THE TOWN
OF GENESEE:

Sharon L. Leair

Sharon L. Leair, Town Chairman

ATTEST:

Meri Majeskie
Meri Majeskie, Town Clerk



1401 Carbon Road, Appleton, Wisconsin
 920 East Main Street, Appleton, Wisconsin

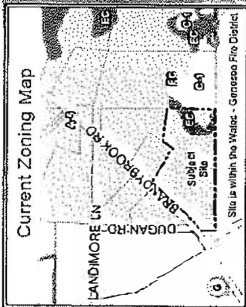
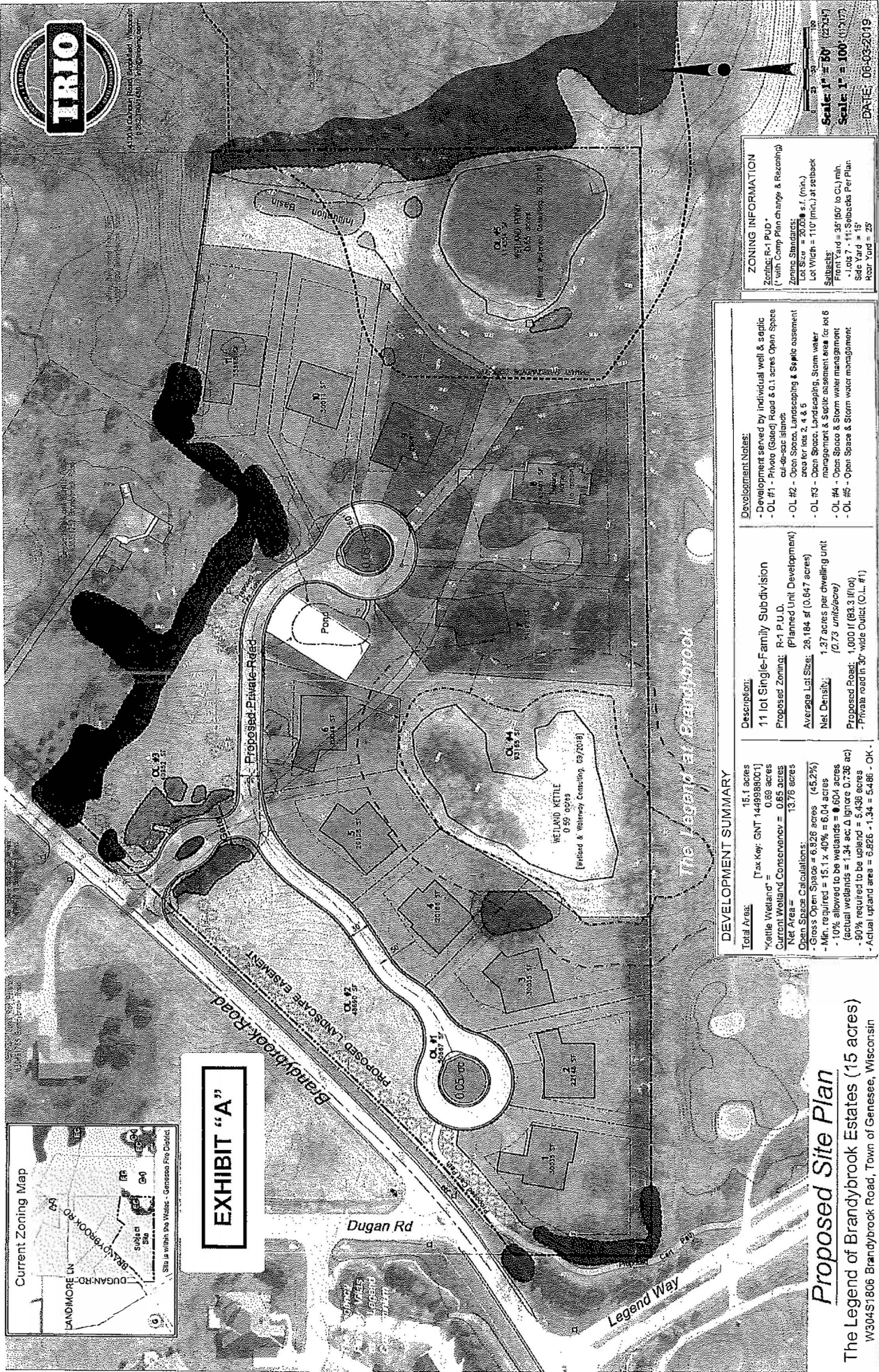


EXHIBIT "A"



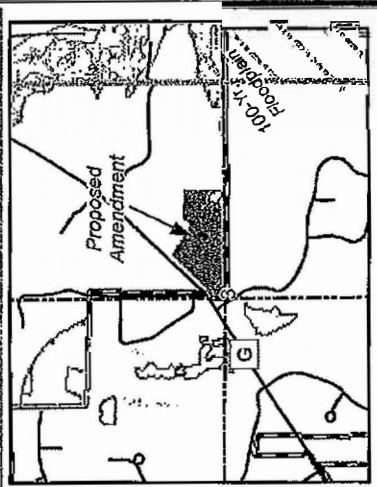
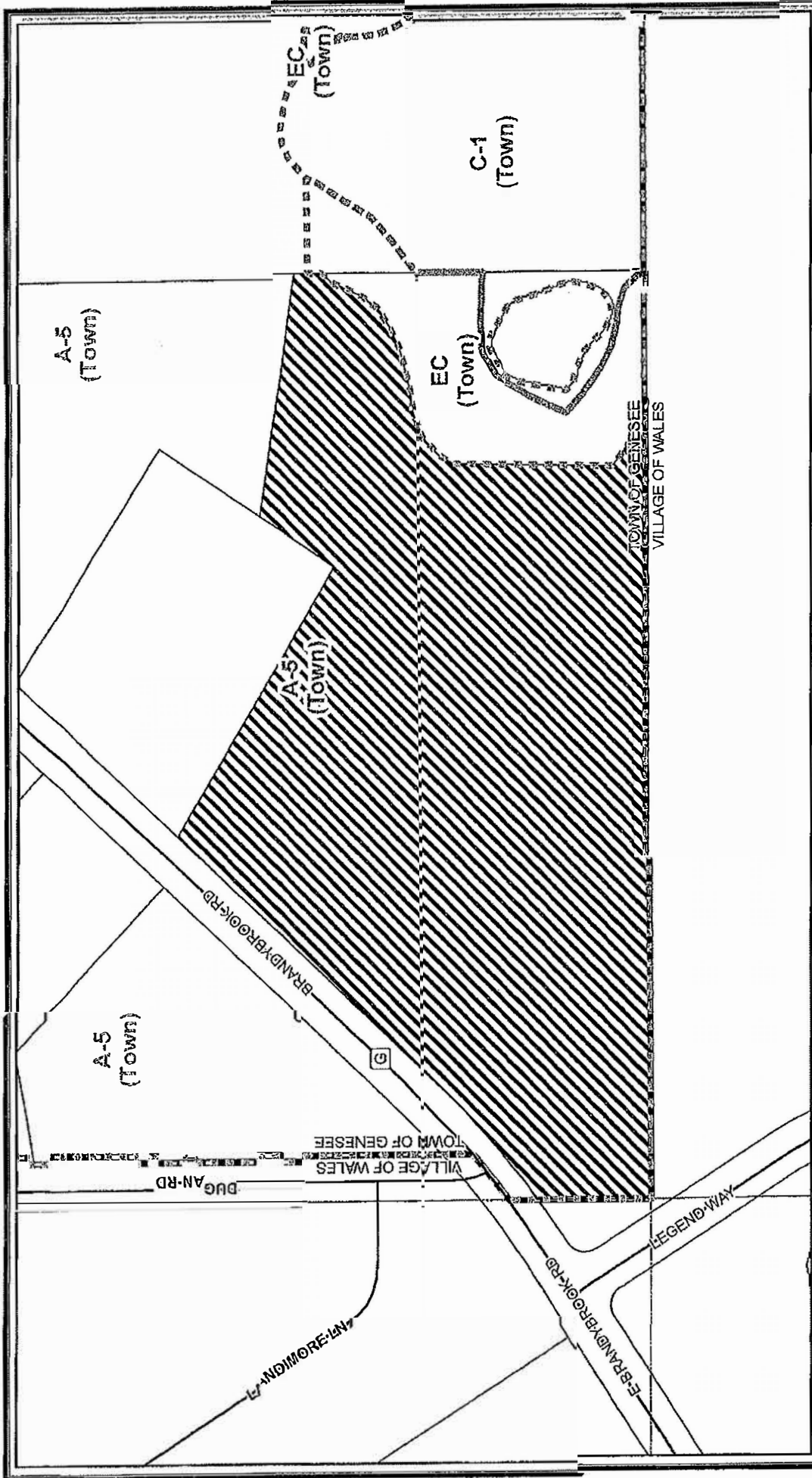
ZONING INFORMATION
 Zoning: R-1 P.U.D.
 (* with Comp Plan change & Rezoning)
 Zoning Standards:
 Lot Size = 20,000 s.f. (min.)
 Lot Width = 110' (min.) at setback
Scale: 1" = 30' (227317)
Scale: 1" = 100' (11317)
 Side Yard = 15'
 Rear Yard = 25'
 DATE: 06-03-2019

Development Notes:
 - Development served by individual well & septic
 - OL #1 - Private (Gated) Road & 0.1 acres Open Space
 - OL #2 - Open Space, Landscaping & Septic assessment
 - OL #3 - Open Space, Landscaping, Storm water
 management & Septic assessment area for lot 6
 - OL #4 - Open Space & Storm water management
 - OL #5 - Open Space & Storm water management

Description:
 11 lot Single-Family Subdivision
 Proposed Zoning: R-1 P.U.D.
 Planned Unit Development
 Average Lot Size: 26,184 sf (0.647 acres)
 Net Density: 1.37 acres per dwelling unit
 Proposed Road: 1,000 lf (63.3 ft/lot)
 Private road in 30' wide Outlet (O.L. #1)

DEVELOPMENT SUMMARY
 Total Area: 15.1 acres
 Kettle Wetland: Tax Key: GNT 144988001
 0.89 acres
 Current Wetland Conservancy = 0.85 acres
 Net Area = 13.78 acres
 Open Space Calculations:
 - Gross Open Space = 6,926 acres (45.2%)
 - Min. required = 15.1 x 40% = 6,044 acres
 - 10% allowed to be wetlands = 6,604 acres
 (actual wetlands = 1.34 ac. Δ ignore 0.736 ac)
 - 90% required to be upland = 5,436 acres
 - Actual upland area = 6,626 - 1.34 = 5,486 - OK.

Proposed Site Plan
 The Legend of Brandybrook Estates (15 acres)
 W304S1806 Brandybrook Road, Town of Genesee, Wisconsin



CONDITIONAL TOWN ZONING CHANGE FROM A-5 MINI FARM DISTRICT TO R-1 RESIDENTIAL DISTRICT

FILE.....RZ46
 DATE OF PLAN COMMISSION.....09/19/19
 AREA OF CHANGE.....12.8 ACRES
 TAX KEY NUMBER.....GNT 1449.988.001




Prepared by the Waukesha County Department of Parks and Land Use

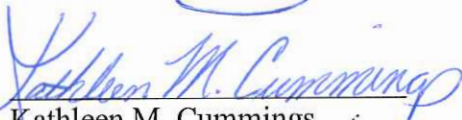
ZONING AMENDMENT

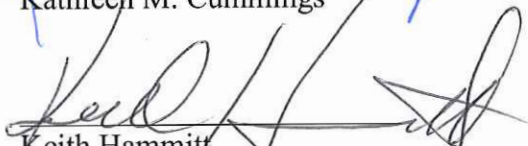
PART OF THE NE 1/4 OF SECTION 3
 TOWN OF GENESSEE

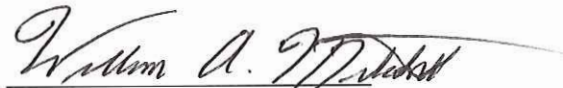
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Presented by:
Land Use, Parks, and Environment Committee


David D. Zimmermann, Chair

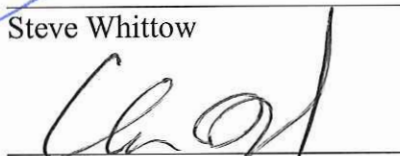

Kathleen M. Cummings


Keith Hammitt

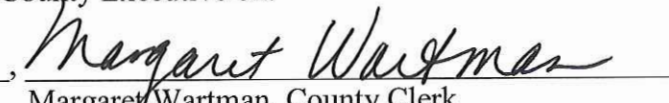

William A. Mitchell

Absent
Thomas J. Schellinger

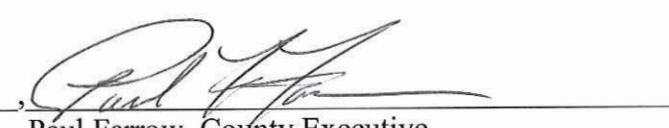

Steve Whittow


Chuck Wood

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

Date: 10/25/19, 
Margaret Wartman, County Clerk

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

Approved: X
Vetoed: _____
Date: 10/25/2019, 
Paul Farrow, County Executive



VOTE RESULTS: Passed By Majority Vote

AYE: 25 **NAY: 0** **ABSENT: 0**

D1 - Foti		Yes
D2 - Zimmermann	Motion	Yes
D3 - Morris		Yes
D4 - Batzko		Yes
D5 - Dondlinger		Yes
D6 - Walz		Yes
D7 - Grant		Yes
D8 - Michalski		Yes
D9 - Heinrich		Yes
D10 - Swan		Yes
D11 - Howard		Yes
D12 - Wolff		Yes
D13 - Decker		Yes

D14 - Wood		Yes
D15 - Mitchell		Yes
D16 - Crowley		Yes
D17 - Paulson		Yes
D18 - Nelson		Yes
D19 - Cummings	Second	Yes
D20 - Schellinger		Yes
D21 - Gaughan		Yes
D22 - Wysocki		Yes
D23 - Hammitt		Yes
D24 - Whittow		Yes
D25 - Johnson		Yes