

PLAN COMMISSION AGENDA

Thursday, February 18, 2021
5:30PM

- 1) Call to Order
- 2) Pledge of Allegiance
- 3) Roll Call
- 4) Public Participation (Non-Agenda Harrison Related Items)
Please be advised per State Statute Section 19.84(2), information will be received from the public; be further advised that there may be limited discussion on the information received; however, no action will be taken under public comments.
- 5) Approve Minutes
 - January 19, 2021
- 6) Convene Meeting and Enter Public Hearing
 - a. Zoning Map Amendment – ECHOE Enterprises – County Road KK, east of State Park Rd
 - b. Conditional Use Permit – ECHOE Enterprises – County Road KK, east of State Park Rd
- 7) Close Public Hearing and Reconvene Regular Meeting
- 8) Items for Discussion and Possible Action
 - a. Zoning Map Amendment – ECHOE Enterprises – County Road KK, east of State Park Rd
 - b. Conditional Use Permit – ECHOE Enterprises – County Road KK, east of State Park Rd
 - c. Special Exception to Design Standards – ECHOE Enterprises – County Road KK, east of State Park Rd
 - d. Final Plat for Stargazer Estates – Lexington Homes – Midway Road
 - e. Zero Lot Line Certified Survey Map – Uecker – N9047 & N9049 Spring Valley Road
- 9) Items for Discussion
 - a. Roles and Responsibilities of the Plan Commission
 - b. Report: Zoning Permits
- 10) Set Next Meeting Date
 - Tentatively March 23, 2021 at 5:30pm
- 11) Adjourn

Any person with hearing disabilities or requiring special accommodations to participate in the meeting should contact the Clerk's Office (920-989-1062) at least 24-hours prior to the meeting. This is a public meeting. As such, a quorum of the Village Board, Zoning Board of Appeals, or Committees may be in attendance. However, the only business to be conducted is for the Plan Commission.

Posted: February 5, 2021

PLAN COMMISSION MEETING

VILLAGE OF HARRISON

From:

Mark J. Mommaerts, AICP, Planner

Meeting Date:

February 18, 2021

Title:

Zoning Map Amendment – ECHOE Enterprises

Issue:

Should the Plan Commission recommend approval of a Zoning Map Amendment from COR to CC to the Village Board?

Background and Additional Information:

Previously, the Plan Commission heard a proposal regarding an indoor, climate-controlled storage facility to be located along County Road KK on property that is currently zoned Office & Retail Commercial [COR]. The zoning code at the time classified all storage facilities as mini-warehousing, which is only allowed as a conditional use in the General Agricultural [AG] and Industrial & Manufacturing [IM] zoning districts. As part of the discussion, the Plan Commission thought a distinction could be made between indoor access, climate-controlled storage and typical exterior access, non-controlled storage facilities. The Plan Commission recommended a zoning text amendment to allow for indoor access, climate-controlled storage facilities as a conditional use in the Community Commercial [CC] zoning district, which the Village Board approved on January 12th.

The applicant is proposing a Zoning Map Amendment (Rezoning) to rezone from Office & Retail Commercial [COR] to Community Commercial [CC] property located along County Road KK, Tax ID 33114. The purpose of the rezoning is to develop an indoor, climate-controlled storage facility.

Findings of Fact:

- Staff finds that the Rezoning request complies with the Future Land Use Map as part of the Comprehensive Plan.
- Property owners within 300-feet of the subject property have been notified via first-class mail.

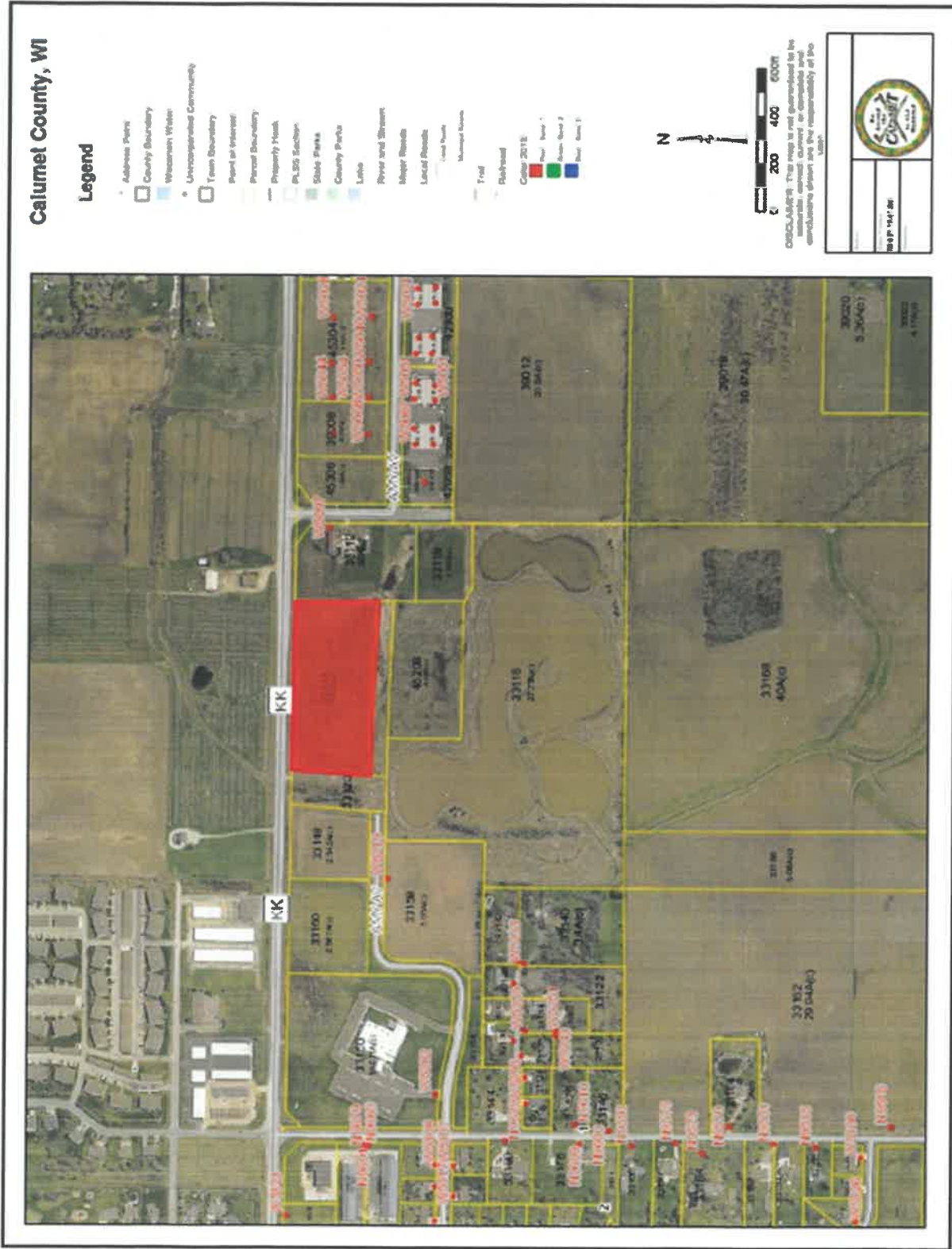
Recommended Action:

Staff recommends approval of the Zoning Map Amendment from Office & Retail Commercial [COR] to Community Commercial [CC].

Attachments:

- Aerial Map
- Zoning Map

Aerial Map



PLAN COMMISSION MEETING

VILLAGE OF HARRISON

From:

Mark J. Mommaerts, AICP, Planner

Meeting Date:

February 18, 2021

Title:

Conditional Use Permit – ECHOE Enterprises

Issue:

Should the Plan Commission recommend approval of a conditional use permit for an indoor access, climate-controlled storage facility to the Village Board?

Background and Additional Information:

The applicant is requesting a Conditional Use Permit (CUP) for a proposed 123,200-square foot indoor access, climate-controlled self-storage facility located on property along County Road KK, Tax ID 33114. The proposed facility will be operated by Extra Space Storage, which provides on-site management, security systems, and adequate lighting. Extra Space Storage has standard hours of operation which are access hours from 6:00am-10:00pm every day of the week and office hours from 9:30am-6:00pm Monday thru Friday and 9:00am-5:30pm Saturdays. Extra Space Storage expects 25-45 visits per day with minimal exterior parking. No outside storage is proposed.

The site plan includes driveway access to County Road KK with two overhead door access points on each side of the building, entry and exit. The interior includes two vehicle isles, several walkway isles, and an office.

Basis for Approval: *(from the Zoning Ordinance Section 117-319)*

1. *Zoning. The proposed use conforms to the underlying zoning district intent and design standards and is in harmony with the general purpose and intent of this chapter. Where there is an existing nonconforming structure, the design standards of the underlying zoning district may be waived by the plan commission and town board. If the Zoning Map Amendment is approved, indoor, climate-controlled storage facilities are a conditional use in the CC zoning district.*
2. *Plans. The proposed use conforms to the comprehensive plan and any other officially adopted plan. The proposed use of the property as a commercial use conforms to the Comprehensive Plan.*
3. *Traffic. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. The main entrance is to County Road KK. It is anticipated that there will be minimal traffic entering/exiting the development on a daily basis.*
4. *Landscaping and screening. Appropriate landscaping and screening has been or will be provided to protect adjacent uses or properties from light, noise and other visual impacts*

that are associated with the proposed use as established in article VI, Access, Parking, and Loading and article IX, Landscaping and Screening Standards. Landscaping may be required to meet buffering requirements. Landscape buffer berms around the property may be warranted.

5. *Neighborhood compatibility. The proposed use is compatible with the predominant or prevailing land use of the neighborhood surrounding the proposed development and whether the proposed use creates a nuisance due to noise, odor, or dust. The surrounding land uses are for commercial or multi-family development. Landscape screening and buffering should be utilized to further reduce potential light nuisance to the multi-family zoning to the south.*
6. *Services. Adequate facilities, access roads, drainage and/or necessary services have been or will be provided. Sanitary sewer and water can be provided to the site. There is a regional stormwater management pond that may service the development.*

Findings of Fact:

- Property owners within 300-feet of the subject property have been notified via first-class mail.

Recommended Action:

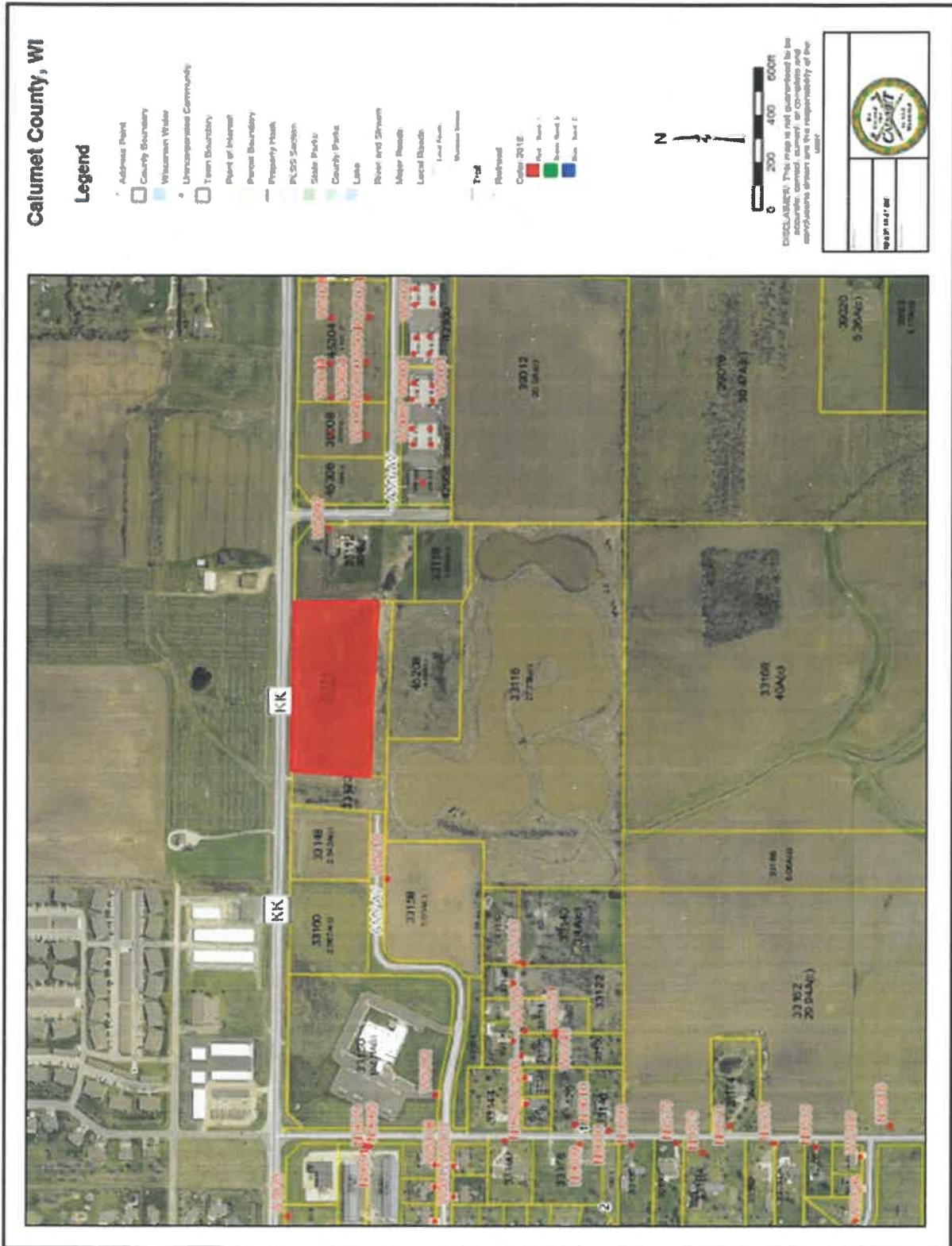
Staff recommends approval of the conditional use permit with the following conditions:

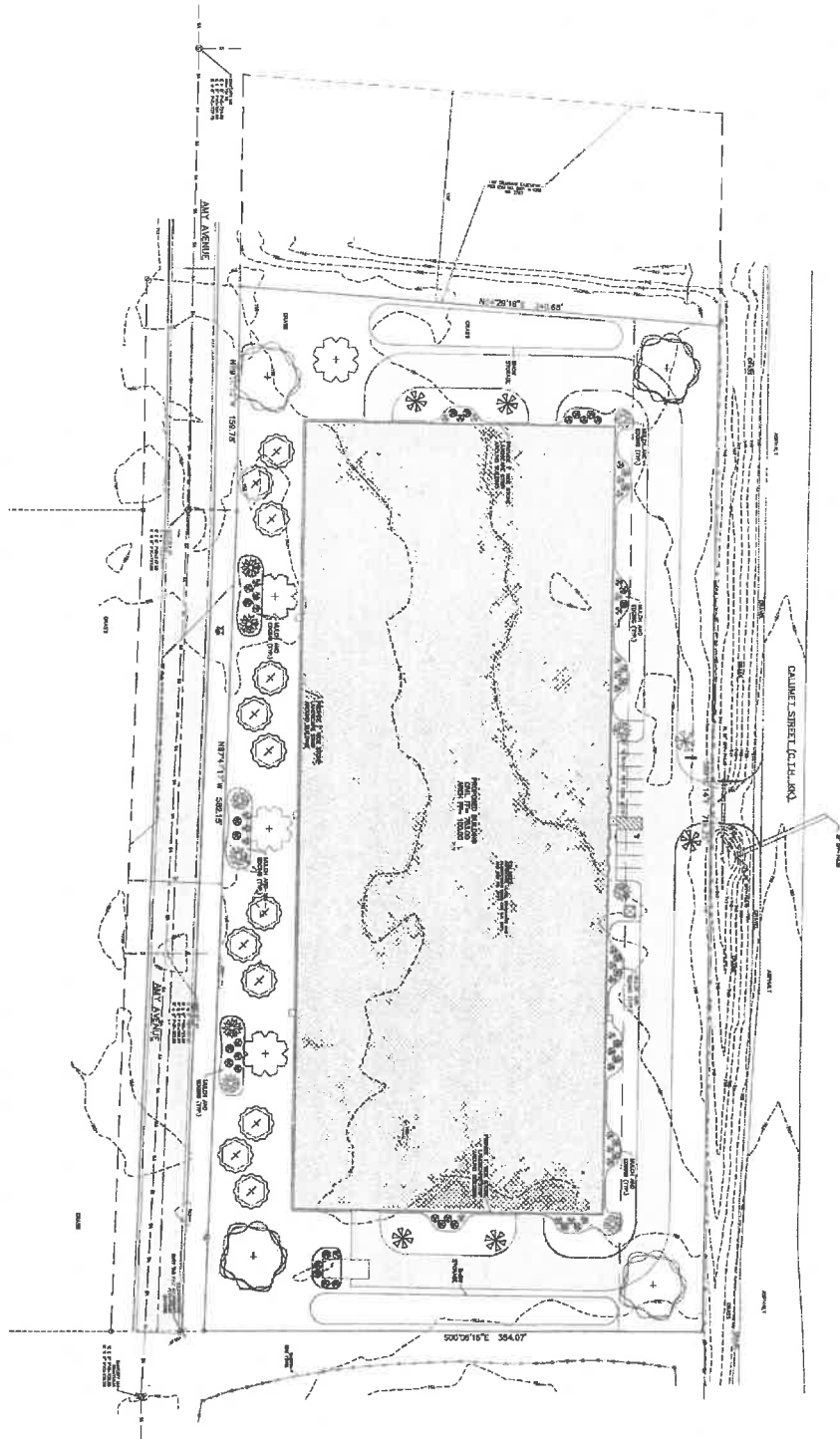
1. Hours of operation, or access to the building interior, shall be limited to 6:00am-10:00pm daily.
2. Berms and landscape areas be provided along the south side of the development. The berm should be approximately 5-feet in height with trees, evergreens, and other plantings that are 4-5-feet in height at the time of planting. Care should be taken to design the berm and plantings to provide approximately 50% opacity within 5-years.
3. The stormwater management plan approval shall be in accordance with the Harrison requirements or buy-in to the regional pond.
4. All exterior building materials shall adhere to the Village Zoning requirements unless a special exception is granted by the Plan Commission.
5. All exterior lighting shall be direct cut-off fixtures to reduce/eliminate any glare.
6. All provisions of the zoning ordinance and all other Village ordinances shall be met.
7. Any comments or revisions from Village staff during the site plan review process shall be incorporated as conditions of approval.
8. All necessary permits shall be obtained prior to construction.
9. .

Attachments:

- Aerial Map
- Plan Set

Aerial Map





LANDSCAPING CALCULATIONS

PLANT	PLANT SYMBOL	PLANT QUANTITY
...

Landscaping Planting Schedule

STATION	OWNER NAME	RECOMMENDATION	SERVICE YEAR	PLANT QUANTITY	PLANT TYPE
...

SPECIFICATION NOTE:
SEE SHEET C01 FOR PLANT SPECIFICATIONS AND REQUIREMENTS

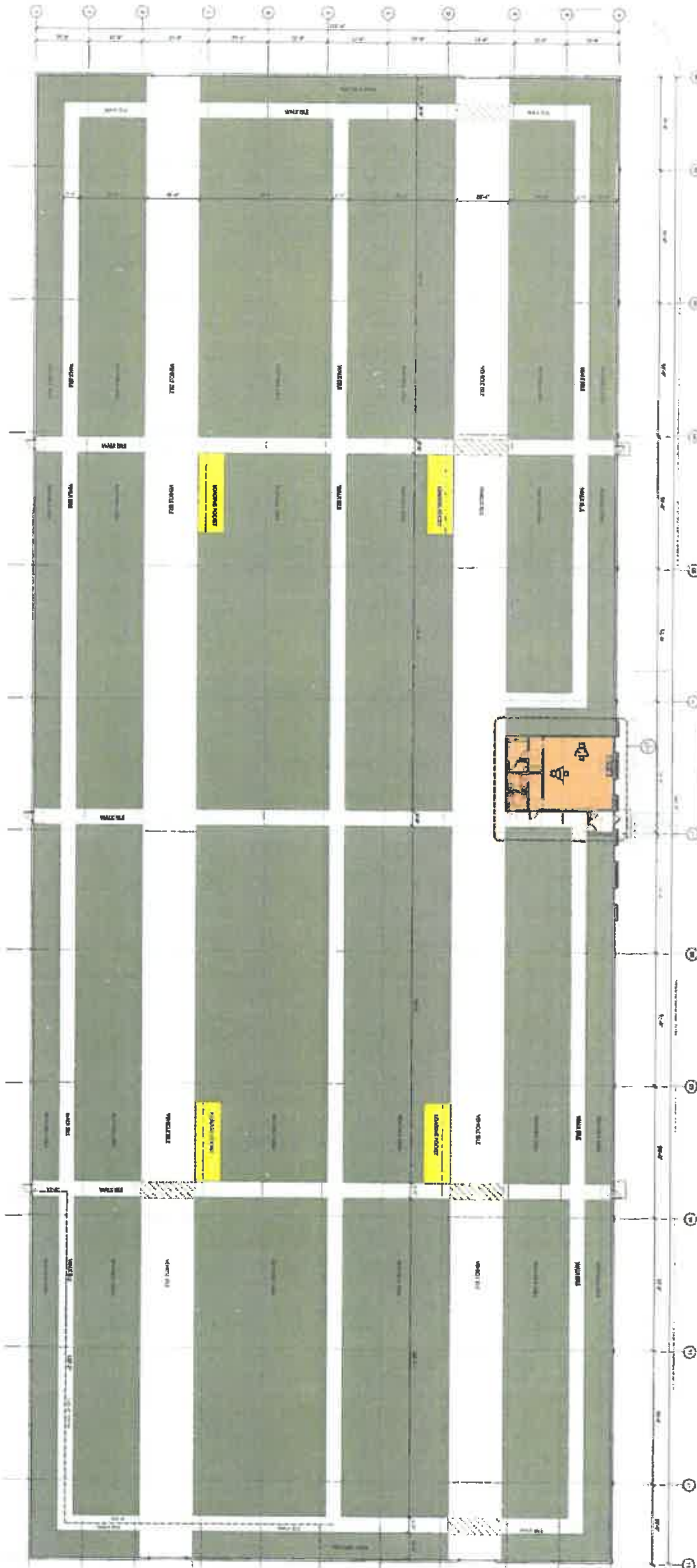


PROPOSED CLIMATE CONTROLLED STORAGE UNITS FOR:
ECHOE HARRISON STORAGE
COUNTY HIGHWAY KK • KAUKAUNA, WI

CON. LANDSCAPE AND RESTORATION PLAN

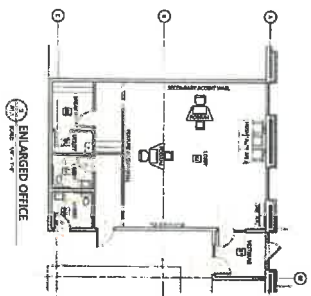
C1.4

DATE: 08/20/2021
TIME: 10:00 AM
PROJECT: ECHOE HARRISON STORAGE
SHEET NUMBER: 2059780
NOT FOR CONSTRUCTION



123,200 TOTAL S.F.
82,854 RENTABLE

FIRST FLOOR



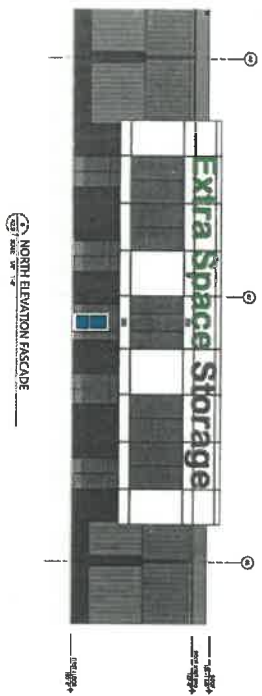
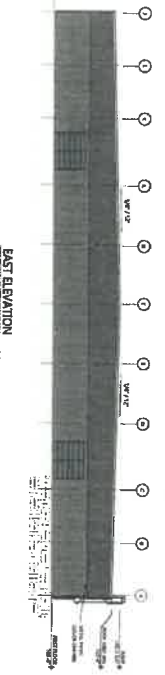
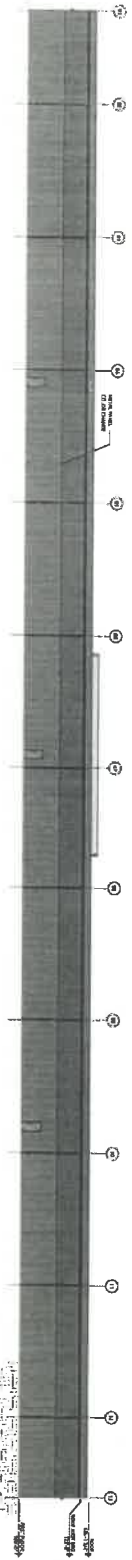
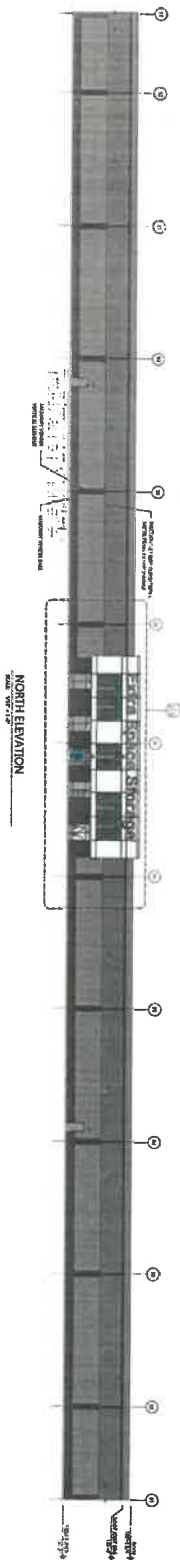
ARCHITECTURAL FIRST FLOOR PLAN

REGULATORY CHECK
 DATE: JAN 24, 2025
 PROJECT: 20597780
 DRAWING: A1.1

NOT FOR CONSTRUCTION

PROPOSED STORAGE UNITS FOR:
ECHOE HARRISON CC STORAGE
 COUNTY HIGHWAY KK • KAUKAUNA, WI

EXCEL
 Always a Better Plan
 1500 County Road 100
 Kaukauna, WI 54949
 920.762.1234



PROPOSED STORAGE UNITS FOR:
ECHOE HARRISON CC STORAGE
 COUNTY HIGHWAY KK • KAUKAUNA, WI

NOT FOR CONSTRUCTION

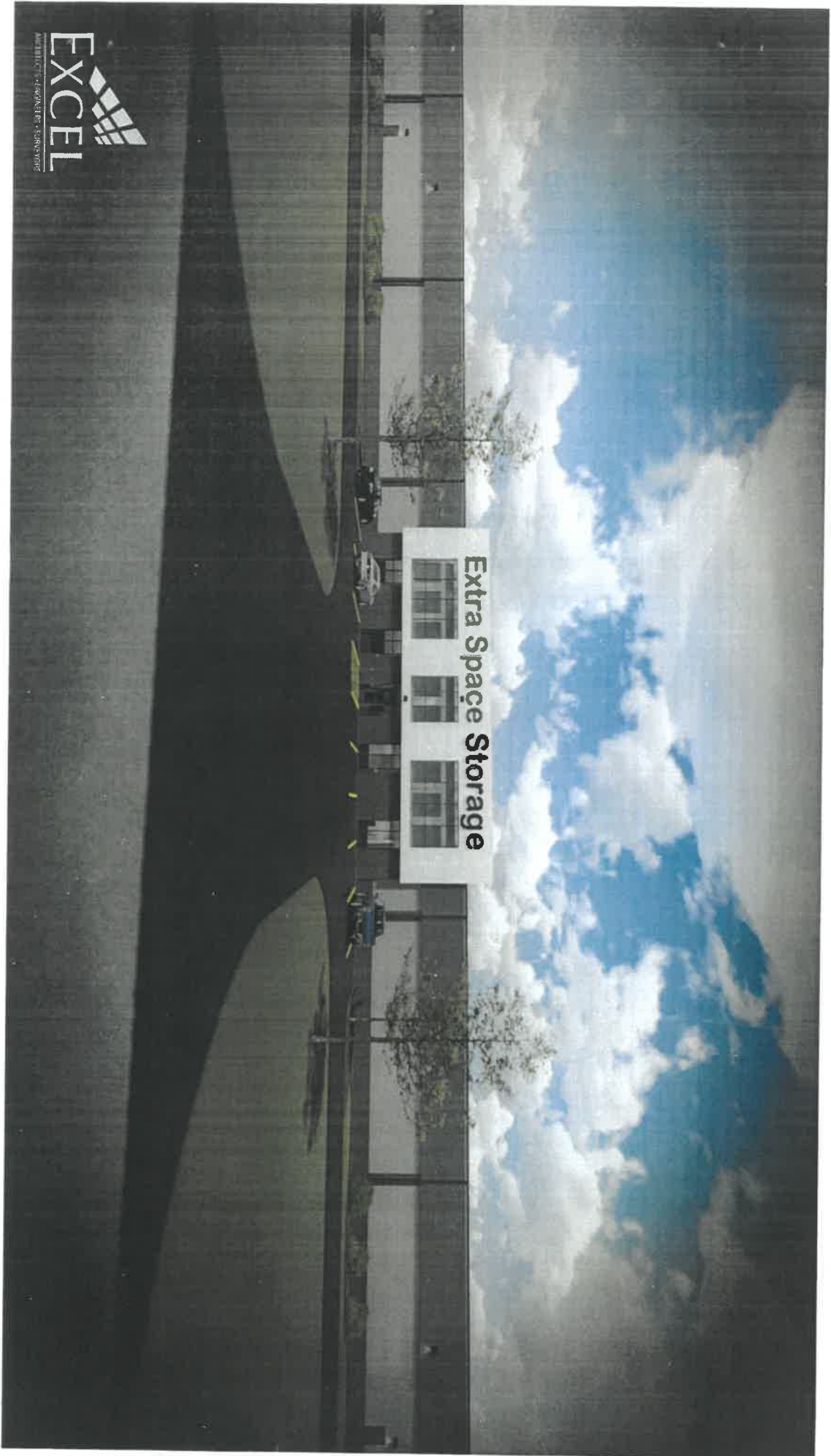
PROJECT NUMBER
 20527780

SHEET NUMBER
A2.0

ARCHITECTURAL EXTERIOR ELEVATIONS



ARCHITECT - INTERIORS - SURVEYING
EXCEL



Extra Space Storage



EXCEL
ARCHITECTS • ENGINEERS • INTERIORS



ARCHITECTS • ENGINEERS • INTERIORS
EXCEL



EXCEL

ARCHITECTS • INTERIORS • SUSTAINABLE

PLAN COMMISSION MEETING

VILLAGE OF HARRISON

From:

Mark J. Mommaerts, AICP, Planner

Meeting Date:

February 18, 2021

Title:

Special Exception to Design Standards – ECHOE Enterprises

Issue:

Should the Plan Commission grant a special exception to the CC zoning district design standards for the climate-controlled indoor storage facility?

Background and Additional Information:

The Developer of a climate-controlled storage facility on County Road KK is requesting a waiver from the design standards found in the Community Commercial [CC] zoning district. The applicant is proposing to deviate from the required amount of materials facing a public street. The applicant is also proposing to deviate from the flat roof plane exceeding 300-foot requirement.

The applicant is proposing to use metal panels and masonry veneer for building materials. The north (main) elevation will have metal panel and masonry veneer on the lower portion of the building. The metal panel will incorporate an inset/outset girt condition with a panel color change. Masonry veneer will also be used on vertical piers at each column line (approx. 50-feet). There will be a defined main building entrance with storefront windows, masonry veneer, fiber cement panels. The east, west, and south (sides and rear) elevations will consist of metal panels with a color change to the match the inset/outset girt condition. The side elevations will each include 2- 14'x12' glass overhead doors for the drive-thru isles. The only roof plane change is on the main entrance which has the fiber cement panels extending past the ridge of the roof.

Zoning Ordinance:

Community Commercial District [CC].

- (o) Design standards. Requirements for new buildings and structures, or additions, built after the effective date of this chapter. Special exceptions to this section shall be granted by the plan commission.*
 - (1) Front door placement. All principal buildings or structures shall have a primary entrance facing a public street. Corner lots are only required to have one primary entrance, the choice of street may be chosen by the lot owner.*

- (2) *Building orientation. All principal buildings shall have a well-defined front façade and entrance with the primary entrance facing a public street. The buildings shall be aligned so the dominant lines of their facades parallel the line of the street.*
- (3) *Materials. Fifty (50%) percent of all exterior walls facing a public or private street and at least the lower 1/3 of all other exterior walls shall be glass, brick, block, fieldstone, architectural cement board siding or other architectural masonry material. Roofs which exceed a pitch of more than three inches in 12 inches shall either be shingled or have an architectural metal roofing system.*
- (4) *Walls. No flat walls exceeding 150 feet in length shall be permitted for any structure; wall offsets, recesses or projections, change in height, change in materials or other architectural details shall be used to meet this requirement.*
- (5) *Roofs. No flat roof plane exceeding 300 feet in length shall be permitted for any structure; pitched roof, parapet wall of varying heights, dormers, overhangs, arches, gables, or other architectural details shall be used to meet this requirement.*
- (6) *Exterior lighting. All exterior lighting shall be in accordance with the following:*
 - a. *All wall-mounted exterior lighting shall be direct cut-off fixtures.*
 - b. *All areas containing exterior lighting (except public street lighting) shall limit light trespass onto adjacent property. Compliance shall be achieved by utilizing fixture shielding, directional control, location, and/or height.*
 - c. *Accent light may be used to highlight architectural and landscape design elements.*
 - d. *Pedestrian walkways and parking areas shall be illuminated to a sufficient level so as to provide for safety and security.*
 - e. *Freestanding light fixtures shall have a maximum height of 25 feet.*
 - f. *Wood light poles shall be prohibited.*
- (7) *Dumpster/refuse enclosures.*
 - a. *Materials. Dumpster/refuse enclosures shall be 100 percent wood, vinyl, or architectural masonry that compliments the principal building. Landscape planting surrounding the enclosure is encouraged.*
 - b. *Location. Dumpster/refuse enclosures are not permitted in the front yard.*
- (8) *Mechanical equipment. All mechanical equipment whether on the ground or roof mounted, including electrical, HVAC, mechanical, or similar, shall be enclosed or screened. Roof mounted equipment shall be integrated into the design of the structure, enclosed or screened to the extent possible.*

Recommended Action:

The proposed design is consistent with other exterior building waivers granted in the past and is similar to building construction of The Barn (formerly Lake Park Sportzone) on Lake Park Road. Staff recommends that the special exception to the design standards be granted with the following conditions:

- 1) The vertical piers on the main elevation shall be carried around on the side and rear elevations.
- 2) That a berm be constructed along the south side and that such berm be at least be 5-feet in height and trees/plants be at least 4-5 feet at planting.

Attachments:

- Renderings



EXCEL
ARCHITECTS • ENGINEERS • SURVEYORS





EXCEL
ARCHITECTS • INTERIORS • EXTERIORS





PLAN COMMISSION MEETING

From:

Mark J. Mommaerts, AICP, Planner

VILLAGE OF HARRISON

Meeting Date:

February 18, 2021

Title:

Final Plat – Stargazer Estates

Issue:

Should the Plan Commission recommend approval of the Final Plat of the Stargazer Estates subdivision to the Village Board?

Background and Additional Information:

The applicant is proposing a 48-lot final plat for a new subdivision called Stargazer Estates. The subdivision is located along Midway Road, west of Lake Park Road. The property is currently zoned Single Family Residential (Traditional) [RS-2]. The subdivision is proposed to have roadway access to Midway Road, with connections to Ethan Drive, Mckayla Drive, and Woodendale Way. All roadways are proposed to be dedicated to the public. Lots are generally 10,500-12,000 square feet in area, the corner lots are generally 13,000 square feet. Sewer and water will be extended through the subdivision. Stormwater management will be accommodated in a stormwater pond north of proposed lots 26-30. The pond will be located on Outlot 1 of CSM #3890, which will be deeded to the Village for park and stormwater purposes.

Recommended Action:

Staff finds the final plat substantially conforms to the preliminary plat. Staff recommends approval of the Final Plat for Stargazer Estates with the following conditions:

1. The Final Plat shall include the statement, “No improvements are allowed within the areas reserved for public utility and drainage easements. Improvements include, but are not limited to, building structures, driveways, parking areas, sheds, landscaping or fences. Any improvement shall be allowed only by special exception of the Village of Harrison Zoning Administrator.”
2. The Utility Easement shall name the Village of Harrison and Harrison Utilities as a grantee for water, sanitary, and storm sewer utility purposes. All water, sanitary, and storm sewer laterals are to be stubbed into all lots a minimum of 6-feet.
3. All notes stated in Section 34.08.030 Section D.1.f shall be included on the final plat.
4. Erosion Control Silt Fence shall be installed, in accordance with State Specifications, along the right-of-way line of all streets prior to roadway acceptance.
5. All lots shall have a storm sewer lateral provided for sump pump discharge.
6. Outlot 1 to be deeded to the Village.
7. All improvements, including but not limited to, utilities, curb & gutter, street paving, sidewalks, shall be installed prior to issuance of building permits or zoning permits, unless

the Village Board approves a Subdivision Development Agreement to allow for improvements to be installed at a later date.

8. All comments from the Village engineer and staff shall be included in the Plan Commission discussion and decision.
9. A note shall be added to the plat indicating no access to County AP/Midway Road for lots 1 and 48.
10. A grading/drainage stormwater management plan and erosion control plan shall be reviewed and approved by the Village engineer and Village staff.
11. Final utility and street plans shall be reviewed and approved by the Village Engineer and Village staff prior to approval of the Final Plat and prior to utility and street construction.
12. Grading/Drainage Plan shall identify elevations of ground at the foundation.
13. Sidewalks and laterals shall be indicated on the infrastructure plans.
14. The final plat and final grading/drainage plans shall include benchmarks for all fire hydrants. Benchmarks shall refer to hydrant tag bolts.
15. Plans shall be sent to the appropriate utility entities for review (ie phone, cable, gas/electric, sewer/water).
16. A street light shall be installed at the intersection of Constellation Drive & County AP/Midway Road. Any proposed street lights shall be installed and upfront costs to be paid by the Developer. The Village will assume long-term maintenance.

Attachments:

- Aerial Map
- Final Plat

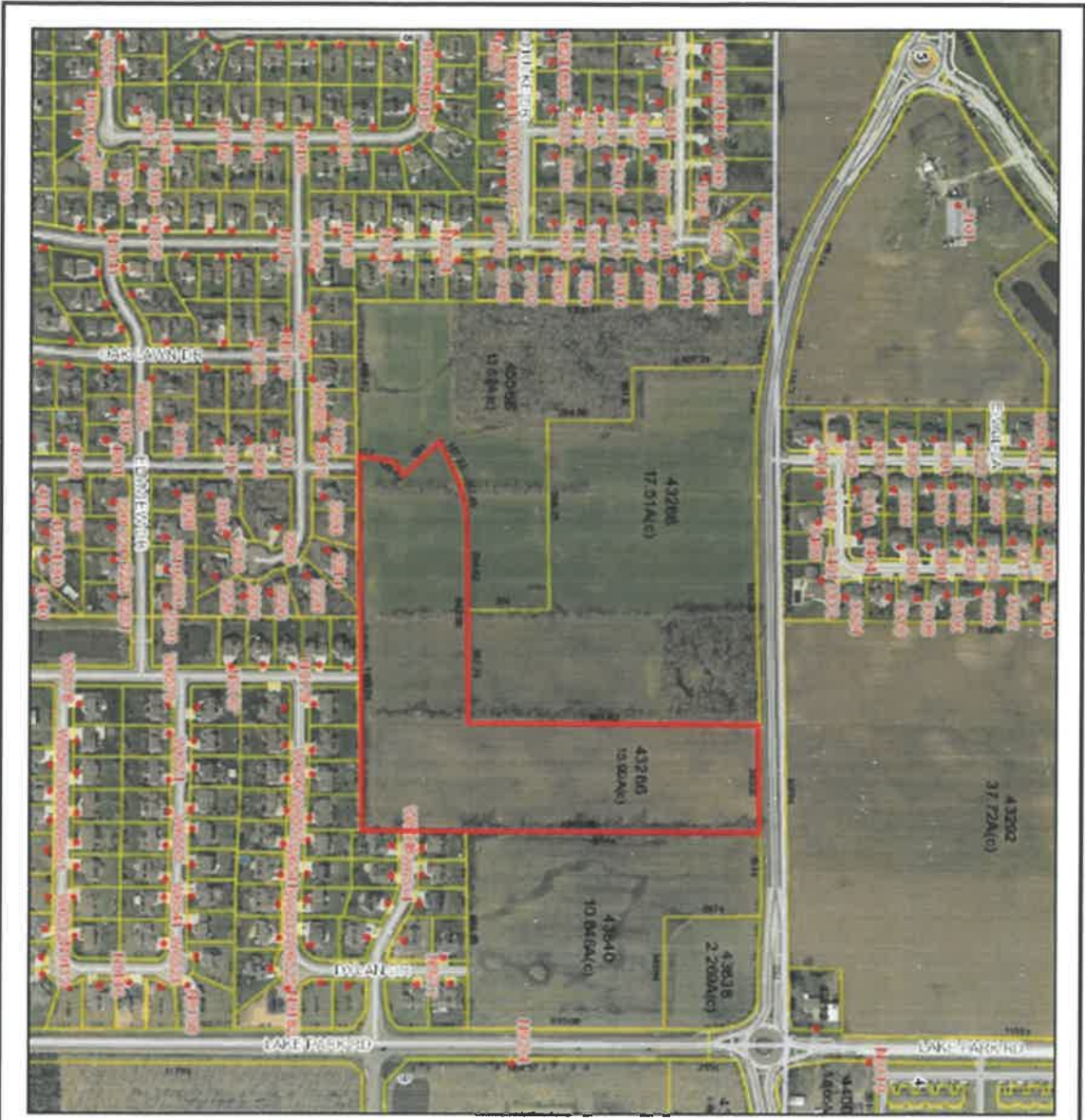
Calumet County, WI

Legend

- Address Point
- County Boundary
- Wisconsin Water
- Unincorporated Community
- Town Boundary
- Street or Internal
- Street Boundary
- Property Type
- PLAS 2020*
- State Parks
- County Parks
- Lakes
- River and Stream
- Major Road
- Local Road
- Other Roads
- Railroad
- Canal
- Other



DISCLAIMER: This map is not guaranteed to be accurate. Calumet County, WI, and its employees are not responsible for any errors or omissions on this map.



PLAN COMMISSION MEETING

VILLAGE OF HARRISON

From:

Mark J. Mommaerts, AICP, Planner

Meeting Date:

February 18, 2021

Title:

Certified Survey Map – Uecker – N9047 & N9049 Spring Valley Road

Issue:

Should the Plan Commission recommend approval of a 2-lot Zero Lot Line Certified Survey Map to the Village Board?

Background and Additional Information:

The applicant is proposing to split a parcel into 2-lots by Certified Survey Map (CSM). The purpose of the CSM is to create a zero lot line unit. The property is located at N9047 & N9049 Spring Valley Road. The property is zoned Two-Family Residential (RT) which is appropriate for zero lot line developments. Setback and lot area requirements have been met.

Recommended Action:

Staff recommends approval of the Certified Survey Map request with the following conditions:

1. A note on the face of the Certified Survey Map shall read, “When attached single-family dwelling units are created, matters of mutual concern to the adjacent property owners due to construction, catastrophe, use, and maintenance shall be guarded against by private/restrictive covenants and deed restrictions, and no approving authority shall be held responsible for the enforcement of same.”
2. Private/restrictive covenants shall be recorded at the Calumet County Register of Deeds in accordance with the zero lot line provisions in the zoning ordinance. A copy of such recorded document shall be provided to the Village Planner.
3. The Harrison Building Inspector shall inspect and approve the common wall in accordance with all applicable building codes prior to the Village signing the Certified Survey Map.

Attachments:

- Aerial Map
- Restrictive Covenants
- CSM

RESTRICTIVE COVENANTS
Title of Document

Document Number

Name and Return Address
Bradley P. Uecker & Kelly M. Uecker Living Trust
N8948 Harrisville ct.
Menasha, WI 54952

Parcel Number: 131-37956

Drafted By: Bradley P. Uecker

ZERO LOT LINE PROPERTY OWNERS' AGREEMENT AND RESTRICTIVE COVENANTS

1. Purpose: The purpose of this Agreement is to submit the land and improvements described herein to Zero-Lot-Line Property.

2. Description of Land: A part of lot wighty (80) Woodland Trails II, Located in the SE ¼ of the SE1/4, Section 9, T.20N., R18E., Village of Harrison, Calumet County, Wisconsin containing 21,000 square feet (0.482 acres) of land

3. Description of Building: This construction consists of one building containing two units. The building is of wood-frame construction. A Plat of Survey of the land showing the location of the building is attached to the Agreement as Exhibit "A".

4. Description of Units: Lot #1 of CSM _____ = N9049 Spring Valley Rd, Lot #2 of CSM _____ = N9047 Spring Valley Rd

5. Common Elements: It is anticipated that the only common element between the improvements established on Lot 1 and Lot 2 shall be a common wall. Wherever improvements abut on the common property line between the adjoining units, there shall be a one-hour fire wall running from the lowest floor level, including the foundation, if it is the common wall, to the underside of the roof sheathing. Such common foundation wall, if any, shall be waterproof masonry. Said wall is to be used by the unit owners in common; each unit to bear equally to the other in the cost of keeping the common wall in good order and repair, provided however, that damage to one side of the common wall not affecting the other side should be repaired by the owner of the unit on whose side the damage occurred. Each party grants the other an easement to and on the common elements for purposes of repair, maintenance, and use.

• Purpose of Units: Each of the units is intended to be used and is restricted to residential purposes. Commercial activity is permitted in the units only to the extent that commercial activity is permitted in residences as stated in the local zoning ordinances. The owner of a unit shall also be allowed to rent their particular unit, as long as the tenant shall abide by the applicable terms and conditions of the use of said unit, as provided in this Zero-Lot-Line Property Owners Agreement.

6. Alterations: No alteration of any kind to the exterior portions of the units or changes of a permanent or semi-permanent nature to the lot areas is to be made without the mutual agreement of both unit owners.

7. Aesthetics: The parties hereto agree that the aesthetics of the units on Lot 1 and Lot 2 are important to the value of the building. Therefore, without the expressed written consent of each party, the other shall not change the exterior color of the building.

8. Maintenance: The parties acknowledge that while only one building is to be constructed on the Property, each party will have a separate dwelling, owned solely by that party, hereinafter to be referred to as that party's unit. Each unit owner shall be responsible for repair, maintenance, and/or replacement of their individual units. Said units shall be repaired at the cost of each individual unit owner and they shall keep their units in good repair, subject only to normal wear and tear.

9. Destruction and Reconstruction: In the event of the total destruction of the building on the property, it shall be determined by agreement of both unit owners whether to rebuild, restore, or sell the property. If damage is only to the unit on one lot, and such damage does not affect the other unit, the damaged unit shall be repaired by the owner of that damaged unit.

10. Acceptance of Property Agreement: The acceptance of a deed or conveyance or entering into occupancy as an owner or tenant of any unit shall constitute acceptance of the provisions of this Owners Zero-Lot-Line Agreement and the rules and regulations adopted pursuant thereto as such documents are amended from time to time. The provisions contained in such instruments as amended from time to time shall be covenants running with the land and shall bind any person having an interest or estate in such unit as though such provisions were recited in full in each deed or lease.

11. Control: Control over this building, containing two (2) units shall be by the respective owners of the individual units and any and all decisions which affect both units shall be made by mutual consent of the unit owners of both units.

12. Insurance: Each of the owners of Lot 1 and Lot 2 shall obtain, separately, adequate insurance for his or her unit. Said insurance to be sufficient and adequate to cover both property (Building and Contents) and personal liability insurance. Each owner of Lot 1 and Lot 2 shall provide to the owner of the adjoining unit a certificate of insurance. Said certificate shall be provided annually to the adjoining unit upon the anniversary date of the initial and/or original insurance binder.

13. Binding Effect: All easements and rights described herein are appurtenant to and running with the land. All easements and rights described herein are granted and reserved to, and shall inure to the benefit of and be binding on, the undersigned, their respective heirs, successors and assigns, and all mortgagors, purchasers and their heirs, executors, administrators, successors and assigns. Acceptance of a deed by a prospective owner of Lot One (1) or Lot Two (2) shall constitute an acceptance of all terms of this Agreement.

14. Amendment: This Agreement and administrative rules, if any, may be amended by the mutual consent of the owners of all units. This agreement may be amended only by a writing signed by the fee simple owners of both Lot 1 and Lot 2 and recorded with the Register of Deeds for Calumet County, Wisconsin. This document constitutes the entire agreement of the lot owners and shall be construed in accordance with laws of the State of Wisconsin.

15. Conveyances: The individual unit owners may sell or rent the unit or units which they own.

16. Right of First Refusal: The owner of any sold unit shall have the right of First Refusal regarding the purchase of the adjoining unit. The owner of any sold unit shall have the right of First Refusal regarding the purchase of the adjoining unit. In the event the adjoining unit has a bona fide offer to purchase by a third party, said adjoining unit owner shall provide a copy of said bona fide offer to purchase to the owner of the other unit and the owner of the other unit shall have two (2) days after receipt of the same to elect in writing to match the terms and conditions of said bona fide offer to purchase. In the event the owner of the remaining unit does not elect to exercise his/her/their right of first refusal within said two-day period, said first right of refusal shall become null and void and the adjoining unit owner shall be free to sell said unit to the third party, pursuant to the terms and conditions of said bona fide offer to purchase. In the event a unit owner elects to exercise his/her/their right of first refusal, said unit owner

purchasing the property shall do so pursuant to the terms and conditions of said bona fide offer to purchase.

17. Mediation: In the event of a dispute or controversy arising out of this agreement, the parties hereto agree that all disputes first be submitted to mediation. Parties may select a mediator by mutual assent. If an agreement cannot be reached, either party can force mediation. If said mediation fails, parties will then submit to arbitration pursuant to the provisions of the Wisconsin Arbitration Act.

18. Approving Authorities: The Village of Harrison and all approving authorities shall not be held responsible for enforcement of said same covenants, and that said covenants shall inure to all heirs and assigns.

19. Service of Process: Service of process on the recorded unit owner of either unit of the property affected by this Agreement shall be by personal service, either being hand-delivered or by a professional process server.

20. A note shall be placed on the face of all Certified Survey Maps and Plats creating ZERO-LOT-LINE LOTS which states:

- Private restrictive covenants shall be recorded at the Calumet County Register of Deeds, providing Declarations and/or By-laws similar to those typically recorded on a Declaration of Condominium. Said covenants shall provide for mediation of any and all disputes between owners of each unit and any third party with regard to construction, use, catastrophe, and maintenance of the real property.

Dated this _____ day of _____, 2020.

Bradley P. Uecker

Kelly M. Uecker

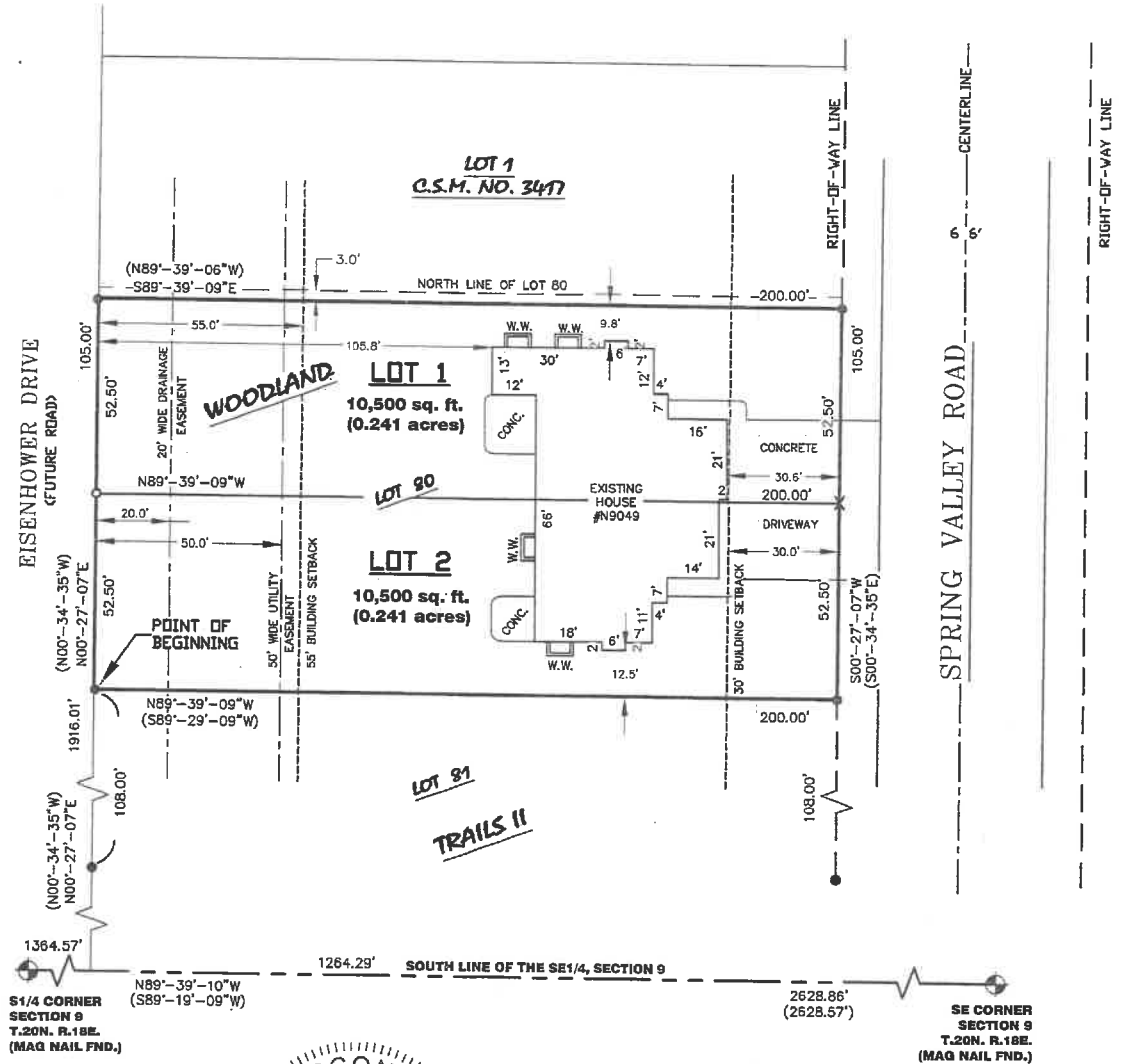
STATE OF WISCONSIN)
) ss
_____ COUNTY)

Personally came before me this ____ day of _____, 2020, the above-named Andrew R. Uecker and Lauren E. Uecker and acknowledged that he executed the foregoing instrument.

(Print Name)
Notary Public, State of Wisconsin
My Commission Expires _____

CERTIFIED SURVEY MAP NO. _____

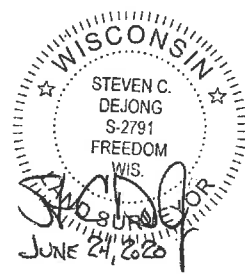
A PART OF LOT 80, WOODLAND TRAILS II, LOCATED IN THE SE1/4 OF THE SE1/4, SECTION 9, T.20N., R.18E., VILLAGE OF HARRISON, CALUMET COUNTY, WISCONSIN



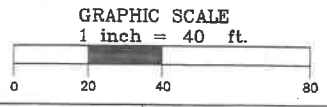
S1/4 CORNER SECTION 9 T.20N. R.18E. (MAG NAIL FND.)

SE CORNER SECTION 9 T.20N. R.18E. (MAG NAIL FND.)

BEARINGS REFERENCED TO THE CALUMET COUNTY COORDINATE SYSTEM AND THE SOUTH LINE OF THE SE1/4 OF SECTION 9, T.20N., R.18E., WHICH BEARS N89°-39'-06"W



- LEGEND-**
- = 1" X 18" IRON PIPE SET (1.130 LB./FT.)
 - ✕ = CUT "X" SET IN CONCRETE
 - = 1" IRON PIPE FOUND
 - ⊕ = COUNTY MONUMENT FOUND
 - () = RECORDED INFORMATION
 - W.W. = WINDOW WELL



SURVEYED FOR:
RUCON CONSTRUCTION MANAGEMENT INC.
W4954 HIGHLINE RD.
KAUKAUNA, WI 54130

OWNER:
BRADLEY & KELLY UECKER LIVING TRUST
N8948 HARRISVILLE COURT
MENASHA, WI 54952

PARCEL NUMBER: 131-37956
DEED: DOC. NO. 525336

MERIDIAN SURVEYING, LLC

N9637 Friendship Drive Office: 920-993-0881
Kaukauna, WI 54130 Fax: 920-273-6037

DRAWN BY: JD	FIELD WORK DATE: 6-23-20
CHECKED BY: S.C.D.	FIELD BOOK: M-54, PG.69
JOB NO.: 12122	SHEET 1 OF 4

STATE OF WISCONSIN)
CALUMET COUNTY) SS

CERTIFIED SURVEY MAP NO. _____

A PART OF LOT 80, WOODLAND TRAILS II, LOCATED IN THE SE1/4 OF THE SE1/4, SECTION 9,
T.20N., R.18E., VILLAGE OF HARRISON, CALUMET COUNTY, WISCONSIN
(Sheet 2 of 4)

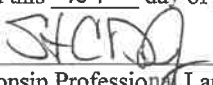
SURVEYOR'S CERTIFICATE

I, Steven C. De Jong, Wisconsin Professional Land Surveyor of Meridian Surveying, LLC, certify that I have surveyed, divided, monumented and mapped under the direction of Bradley Uecker, a part of Lot Eighty (80), Woodland Trails II, a subdivision located in the Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section Nine (9), Township Twenty (20) North, Range Eighteen (18) East, Village of Harrison, Calumet County, Wisconsin containing 21,000 square feet (0.482 acres) of land and being described by:

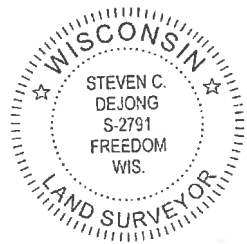
Commencing at the Southeast Corner of said Section 9; thence N89°-39'-10"W 1264.29 feet along the south line of the SE1/4 of said Section 9; thence N00°-27'-07"E 1916.01 feet to the southwest corner of said Lot 80 and the point of beginning; thence continue N00°-27'-07"E 105.00 feet along the west line of said Lot 80 to the southwest corner of Lot 1 of Certified Survey Map No. 3417 as recorded as Document No. 491578; thence S89°-39'-09"E 200.00 feet along the south line of said Lot 1 to a point on the west line of Spring Valley Road; thence S00°-27'-07"W 105.00 feet along said west line of Spring Valley Road to the southeast corner of said Lot 80; thence N89°-39'-09"W 200.00 feet along the south line of said Lot 80 to the point of beginning. Being subject to any and all easements and restrictions of record.

That such is a correct representation of all exterior boundaries of the land surveyed. That I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes and the Land Subdivision Ordinance of the Village of Harrison in surveying, dividing, monumenting, dedicating and mapping the same.

Dated this 24th day of JUNE, 2020.



Wisconsin Professional Land Surveyor
Steven C. De Jong, S-2791



Survey Notes:

- Parcel No.: 131-37956
- Deed: Document No. 525336
- Property Owner(s): Bradley P. & Kelly M. Uecker Living Trust
- Property Address: N9049 Spring Valley Road, Menasha, WI 54952

STATE OF WISCONSIN)
CALUMET COUNTY) SS

CERTIFIED SURVEY MAP NO. _____

A PART OF LOT 80. WOODLAND TRAILS II, LOCATED IN THE SE1/4 OF THE SE1/4, SECTION 9,
T.20N., R.18E., VILLAGE OF HARRISON, CALUMET COUNTY, WISCONSIN
(Sheet 3 of 4)

VILLAGE OF HARRISON CERTIFICATE

This Certified Survey Map in Section 9, Township 20 North, Range 18 East, Village of Harrison,
Calumet County, Wisconsin, is hereby approved.

Village of Harrison - President

Date

Village of Harrison - Clerk

Date

VILLAGE TREASURER'S CERTIFICATE

I being the duly elected qualified and acting treasurer of the Village of Harrison, do hereby certify that
in accordance with the records in my office, there are no unpaid taxes or unpaid assessments as of this
_____ day of _____, 2020 on any lands included in this Certified Survey Map.

Village of Harrison - Treasurer

Date

COUNTY TREASURER'S CERTIFICATE:

I hereby certify that there are no unpaid taxes or unpaid special assessments on any of the lands included
in this minor subdivision as of this _____ day of _____, 2020.

County Treasurer: Calumet County

Date



STATE OF WISCONSIN)
CALUMET COUNTY) SS

CERTIFIED SURVEY MAP NO. _____

A PART OF LOT 80. WOODLAND TRAILS II, LOCATED IN THE SE1/4 OF THE SE1/4, SECTION 9,
T.20N., R.18E., VILLAGE OF HARRISON, CALUMET COUNTY, WISCONSIN
(Sheet 4 of 4)

OWNER'S CERTIFICATE

As owner, I hereby certify that I caused the land on this Certified Survey Map to be surveyed, divided, monumented, dedicated & mapped as represented on this map. I also certify that this map is required by S. 236.34 to be submitted to the following for approval or rejection: Village of Harrison

Bradley P. Uecker (Trustee)
Bradley P. & Kelly M. Uecker Living Trust

Date

NOTARY CERTIFICATE

Personally came before me this _____ day of _____ 2020.

The above owner's to me known to be the person's who executed the foregoing instrument and acknowledge the same.

Notary Public _____ County, Wisconsin.

My Commission Expires _____



PLAN COMMISSION MEETING

VILLAGE OF HARRISON

From:

Mark J. Mommaerts, AICP, Planner

Meeting Date:

February 18, 2021

Title:

Roles and Responsibilities of the Plan Commission

Issue:

What authority does the Plan Commission have in Village decisions?

Background and Additional Information:

At the last Plan Commission meeting, it was asked what role and responsibilities the Plan Commission has. In general, the Plan Commission is largely advisory to the Village Board. Essentially, the Plan Commission's role is related to community planning and land use development. Community planning refers to the Comprehensive Plan, which includes plan implementation (often ordinance development or review) and public participation and education (often public meetings or public hearings). Development review (rezonings, conditional use permits, subdivision plat) is another main component.

The Plan Commission should be a committee to listen to the public, hear evidence, and make recommendations to the Village Board. This role is intended to allow public participation in the development review, while not burdening the Village Board with the time necessary to conduct their own hearings. The Village Board should rely on the Plan Commission recommendation; however, most state statutes are created giving the governing body (Village Board) ultimate authority to approve, deny, or conditional approve an item.

For the Village of Harrison, the Plan Commission has sole authority to approve special exceptions to the design standards in the zoning ordinance. This authority is granted within the zoning ordinance. All other decisions are advisory or recommendations to the Village Board. Case law and state statutes, and Harrison ordinances, often dictate timeline reviews and decision making authority.

Under State Statute, the following ordinances, either newly adopted or revised, must be consistent with the Comprehensive Plan: official mapping, subdivision/land division, zoning, shoreland zoning. This is why there are Comprehensive Plan Amendments prior to rezonings in some cases, to ensure compliance and consistency. Generally, when making a decision on a rezoning, the Comprehensive Plan should be the guiding information used to make a decision/recommendation.

My experience in the Village over the last 12 years is that the Village Board relies on the Plan Commission recommendation when making decisions. There have been cases, mostly within the

past couple of years, when the Village Board acted against or without the recommendation of the Plan Commission. These cases can mostly be explained by the Village Board finding the recommendation in disagreement with a state statute or needed to make a decision within the review time constraints. I cannot speak for the Village Board, but I think the Plan Commission's time, energy, and thoughtfulness into the decision making recommendation is appreciated.

Recommended Action:

None, discussion/information item only.

Attachments:

- Handout from the Center of Land Use Education (CLUE) Plan Commission Handbook
- Various Wisconsin Statutes relating to items often referred to the Plan Commission.
- WAPA January Case Law Update – WI Court of Appeals Opinion

ROLE OF THE PLAN COMMISSION

The plan commission performs a wide variety of functions related to community planning and land use development. Formal roles are outlined in state statutes and local ordinances while informal roles evolve as a result of the nature of the plan commission's work. Five general roles are outlined below:

► Community Planning

One of the primary roles of the plan commission is to prepare community plans and recommend their adoption to the governing body. Important roles for the plan commission include overseeing the development of a request for proposals for professional planning services; designing the planning process; developing a community vision; reviewing community data and trends; developing goals and objectives; and recommending policies, programs and tools to implement the plan.

► Plan Implementation

The plan commission plays an important role in the adoption and administration of zoning ordinances, land division ordinances, development standards and other related plan implementation tools. While adoption of these tools is a legislative function reserved by state law for the local governing body, the commission's role is nonetheless important. The plan commission may be involved in drafting and reviewing ordinances or amendments, public airing of proposals, and making recommendations to the governing body.

► Public Participation and Education

The plan commission may be asked to take the lead role in involving the public in developing community plans and implementing programs or ordinances. A well-designed public participation process will identify affected parties, provide meaningful opportunities for public involvement, and ensure that as many points of view as possible are expressed

throughout the process. While involving the public may add significant time, expense, and other challenges to the process, it can also help the community to identify issues of concern, assess the impacts of a proposal on various parties, and garner political support leading to adoption of the plan or ordinance.

► Development Review

In communities that are experiencing growth and change, the plan commission often spends a majority of its time reviewing specific land development proposals. Requests for zoning amendments, conditional use permits, and subdivision plats appear frequently on the municipal plan commission agenda. Plan commissions may also be involved in other types of development review including but not limited to site plan review, planned unit development review, historic preservation review, and design review.

► Referrals and Advisory Recommendations

The plan commission reviews a wide variety of matters referred to it. The table on the following page contains a list of items that must be referred to the plan commission before the decision-making body may take action. In most cases, the plan commission is given thirty days to review these matters.¹ If a report is not submitted by the plan commission within that time period, the decision-making body may proceed without it.² Failure to refer one of these items to the plan commission may result in a court voiding the action.³ In addition to the items outlined in this table, the governing body may refer any other matter to the plan commission that it deems appropriate. These referrals may be outlined in a local ordinance or determined on a case-by-case basis.

¹ The governing body may extend this time. Review of amendments to the zoning ordinance and official map are given 60 days.

² *KW Holdings, LLC v. Town of Windsor*, 2003 WI App 9, 259 Wis. 2d 357, 656 N.W.2d 752, 02-0706.

³ *Scanlon v. Menasha*, 16 Wis. 2d 437, 114 N.W.2d 791 (1962).

Role of the Plan Commission

What functions is the plan commission required to perform? What functions are optional?

The following table provides a summary of typical plan commission functions. Words such as “shall” and “must” indicate functions the plan commission is required to perform. Words such as “may” and “should” indicate functions that may be required by local ordinance or initiated at the discretion of the governing body or plan commission.

Community Planning

- **Plan Preparation.** The plan commission shall prepare and recommend a comprehensive plan for adoption by the governing body.⁴ The commission may also prepare other more detailed community plans, reports and recommendations.
- **Plan Review and Updates.** The comprehensive plan must be updated at least once every ten years.⁵ However, the plan commission may review or recommend updates to the plan on a more frequent basis.
- **Consistency Review.** New or amended zoning, subdivision and official mapping ordinances must be consistent with the comprehensive plan.⁶ The plan commission may be asked to review these items for consistency.

Public Participation

- **Preparation of a Public Participation Plan.** The governing body is required to prepare written procedures for public participation in association with the preparation of a comprehensive plan.⁷ The plan commission may be asked to prepare this plan or take a lead role in involving the public.
- **Public Meetings and Hearings.** Under Wisconsin’s Open Meetings Law, all meetings and hearings of the plan commission must be open to the public and preceded by advance notice.⁸ A public hearing must be held by the plan commission or governing body prior to adopting plans and ordinances and in association with most development review functions.

Plan Implementation

- **Ordinances.** At the direction of the governing body, the plan commission shall prepare and recommend ordinances or amendments necessary to implement the plan (i.e. zoning,⁹ subdivision,¹⁰ official mapping,¹¹ driveway access, design review, etc.)
- **Programs.** The plan commission may recommend programs for public improvements¹² or other non-regulatory programs to implement the plan (i.e. education, economic development, tourism promotion, acquisition of land or conservation easements, capital improvement programs, intergovernmental agreements, etc.)

Development Review

- **Plat Review.** Proposed plats that fall within a municipality’s plat approval jurisdiction must be referred to the plan commission for review. Approval of preliminary or final plats may be assigned to the plan commission or governing body.¹³

- **Rezones.** Proposed zoning amendments must be referred to the plan commission for review.¹⁴ (Note: For towns under county zoning, rezones and other zoning matters do not need to be referred to town plan commissions. However, notice of rezones must be provided to affected towns.)
- **Conditional Uses.** Authority to decide zoning conditional use permits may be assigned to the plan commission, zoning board, or governing body as specified in the local zoning ordinance.¹⁵
- **Other review** as assigned by the governing body including but not limited to site plan review, design review, historic preservation review, etc.

Referrals and Advisory Recommendations

The following matters must be referred to the plan commission for review and consideration before the governing body or other decision-making body takes action:¹⁶

- Location and design of public buildings
- Location of statues and memorials
- Land for public purposes such as streets, parks, airports, etc.
- Land for public or semi-public housing, slum clearance, relief of congestion, vacation camps for children
- Public utilities
- General fire limits¹⁷
- Child welfare agencies and group homes¹⁸
- Community-based residential facilities¹⁹
- Pedestrian malls²⁰
- Proposed housing projects²¹
- Plats of lands over which the municipality is given platting jurisdiction
- Adoption or amendment of a subdivision or land division ordinance²²
- Amendment or repeal of any ordinance adopted under Wis. Stat. sec. 62.23, including ordinances relating to plan commissions, comprehensive planning, official mapping and zoning.

Miscellaneous Powers

- **Hire Staff.** The plan commission may employ or contract for the services of experts or staff, not to exceed appropriations made by the governing body.²³
- **Adopt Rules of Procedure.** The plan commission may adopt rules of procedure and shall keep a record of its studies, resolutions, transactions, findings, and determinations.²⁴
- **Inspect Land.** The plan commission may enter upon land, make examinations and surveys, and place and maintain necessary monuments and marks thereon.²⁵

⁴ Wis. Stat. §§ 62.23(2) and 59.69(3)(a). ⁵ Wis. Stat. § 66.1001(2)(i). ⁶ Wis. Stat. § 66.1001(3). ⁷ Wis. Stat. § 66.1001(4)(a). ⁸ Wis. Stat. § 19.83. ⁹ Wis. Stat. §§ 59.69(5)(e), 60.61(4)(b) and 62.23(7)(d)1a. ¹⁰ Wis. Stat. § 236.45(4). ¹¹ Wis. Stat. § 62.23(6). ¹² Wis. Stat. § 62.23(4). ¹³ Wis. Stat. § 62.23(5) and 236.10(3). ¹⁴ Wis. Stat. §§ 59.69(5)(e) and 62.23(7)(d)2. ¹⁵ Wis. Stat. §§ 59.694(1) and 62.23(7)(e)1. ¹⁶ Wis. Stat. § 62.23(5) which applies to cities, villages and towns with village powers. Other references as noted. ¹⁷ Wis. Stat. § 62.23(9)(b). ¹⁸ Wis. Stat. § 48.68(3). ¹⁹ Wis. Stat. § 50.03(4). ²⁰ Wis. Stat. § 66.0905. ²¹ Wis. Stat. § 66.1211(3). ²² Wis. Stat. § 236.45(4). ²³ Wis. Stat. §§ 59.69(2)(d) and 62.23(1)(e). ²⁴ Wis. Stat. §§ 59.69(2)(c) and 62.23(2). ²⁵ Wis. Stat. § 62.23(4).

3 Updated 17–18 Wis. Stats.

PLATTING LANDS 236.12

(4) Any municipality, town or county may under s. 66.0301 agree with any other municipality, town or county for the cooperative exercise of the authority to approve or review plats. A municipality, town or county may, under s. 66.0301, agree to have a regional planning commission review plats and submit an advisory recommendation with respect to their approval. A municipality, town or county may agree with a regional planning commission for the cooperative exercise of the authority to approve or review plats only as provided under s. 66.0309 (11).

(5) Any municipality may waive its right to approve plats within any portion of its extraterritorial plat approval jurisdiction by a resolution of the governing body recorded with the register of deeds incorporating a map or metes and bounds description of the area outside its corporate boundaries within which it shall approve plats. The municipality may rescind this waiver at any time by resolution of the governing body recorded with the register of deeds.

History: 1979 c. 248; 1993 a. 301; 1999 a. 150 s. 672; 2015 a. 178.

A city improperly included lots not within its extraterritorial plat approval jurisdiction in the city's calculation of fees assessed to a developer. *Brookhill Development, Ltd. v. City of Waukesha*, 103 Wis. 2d 27, 307 N.W.2d 242 (1981).

Section 236.12 (2) (a) does not restrict a town's authority to impose public improvements as conditions for plat approval during a contested annexation. When a town is legally contesting the annexation, sub. (1) (a) requires both the annexing municipality and the town from which the area has been annexed to approve a final plat in accordance with s. 236.12. *KW Holdings, LLC v. Town of Windsor*, 2003 WI App 9, 259 Wis. 2d 357, 656 N.W.2d 752, 02–0706.

Artificial lakes and land subdivisions. *Kusler*, 1971 WLR 369.

236.11 Submission of plats for approval. (1) (a) Before submitting a final plat for approval, the subdivider may submit, or the approving authority may require that the subdivider submit, a preliminary plat. It shall be clearly marked "preliminary plat" and shall be in sufficient detail to determine whether the final plat will meet layout requirements. Within 90 days the approving authority, or its agent authorized to approve preliminary plats, shall take action to approve, approve conditionally, or reject the preliminary plat and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or extension thereof, constitutes an approval of the preliminary plat.

(b) If the final plat conforms substantially to the preliminary plat as approved, including any conditions of that approval, and to local plans and ordinances adopted as authorized by law, it is entitled to approval. If the final plat is not submitted within 36 months after the last required approval of the preliminary plat, any approving authority may refuse to approve the final plat or may extend the time for submission of the final plat. The final plat may, if permitted by the approving authority, constitute only that portion of the approved preliminary plat that the subdivider proposes to record at that time.

(c) A professional engineer, a planner, or another person charged with the responsibility to review plats shall provide the approving authority with his or her conclusions as to whether the final plat conforms substantially to the preliminary plat and with his or her recommendation on approval of the final plat. The conclusions and recommendation shall be made a part of the record of the proceeding at which the final plat is being considered and are not required to be submitted in writing.

(2) (a) The subdivider or subdivider's agent shall submit to the body or bodies having authority to approve plats an electronic copy of the final plat or a copy of the final plat that is capable of legible reproduction. The approving authority or authorities shall approve or reject the final plat within 60 days of its submission, unless the time is extended by agreement with the subdivider or subdivider's agent. When the approving authority is a municipality and determines to approve the plat, it shall give at least 10 days' prior written notice of its intention to the clerk of any municipality whose boundaries are within 1,000 feet of any portion of such proposed plat but failure to give such notice shall not invalidate any such plat. If a plat is rejected, the reasons therefor shall be stated

in the minutes of the meeting and a copy thereof or a written statement of the reasons shall be supplied to the subdivider or subdivider's agent. If the approving authority fails to act within 60 days and the time has not been extended by agreement and if no unsatisfied objections have been filed within that period, the plat shall be deemed approved, and, upon demand, a certificate to that effect shall be made on the face of the plat by the clerk of the authority that has failed to act.

(b) The approval of the approving authority or authorities may be based on the copy submitted under par. (a) but the approval must be inscribed on the recordable plat document. Before inscribing its approval, the approving authority shall require the subdivider or subdivider's agent to certify the respects in which the recordable plat document differs from the copy, if any. An approving authority must approve all modifications in the final plat before it gives final approval to the plat. No approving authority may inscribe its final approval on a plat before the affixing of the certificate by the department under s. 236.12 (3).

History: 1979 c. 248; 1997 a. 332; 2009 a. 376; 2013 a. 358.

Under s. 236.11 (1) (a), a village must act within the stated time limit as to a preliminary plat, even though the plat allegedly violates the official city map. Tabling consideration of the plat within the stated time is not sufficient. *State ex rel. Lozoff v. Board of Trustees of Hartland*, 55 Wis. 2d 64, 197 N.W.2d 798 (1972).

236.12 Procedure for approval of plats. (1) This section shall not apply to cities of the first class nor to unincorporated land in a county having a population of 750,000 or more.

(2) (ac) The subdivider or subdivider's agent shall submit an electronic copy of the preliminary or final plat, or a copy of the preliminary or final plat that is capable of clearly legible reproduction, to the department, which shall examine the plat for compliance with ss. 236.15, 236.16, 236.20, and 236.21 (1) and (2).

(ap) Within 2 days after a preliminary or final plat is submitted under par. (ac), the department shall transmit an electronic copy of the plat, or, if the department prefers, 2 legible hard copies of the plat, to each state agency authorized to object to the plat under this paragraph. If the subdivision abuts or adjoins a state trunk highway or connecting highway, the department shall transmit a copy or copies of the plat to the department of transportation so that the agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. If the subdivision is not served by a public sewer and provision for that service has not been made, the department shall transmit a copy or copies of the plat to the department of safety and professional services so that the agency may determine whether it has any objection to the plat on the basis of its rules as provided in s. 236.13. In lieu of this procedure the agencies may designate local officials to act as their agents in examining the plats for compliance with the statutes or their rules by filing a written delegation of authority with the approving body.

(b) Within 2 days after a preliminary or final plat is submitted under par. (ac), the department shall transmit an electronic copy of the plat, or, if the department prefers, 4 legible hard copies of the plat, to the county planning agency, if the agency employs on a full-time basis a professional engineer, a planner, or other person charged with the duty of administering planning legislation and adopts a policy requiring submission so that the body may determine if it has any objection to the plat on the basis of a conflict with park, parkway, expressway, major highways, airports, drainage channels, schools, or other planned public developments. If no county planning agency exists, then 2 copies to the county park commission except that in a county with a county executive or county administrator, 2 copies to the county park manager, if the subdivision abuts a county park or parkway so that the body may determine if it has any objection to the plat on the basis of a conflict with the park or parkway development.

(3) Within 20 days after the date of receiving the copies of the plat any agency having authority to object under sub. (2) shall notify the subdivider or subdivider's agent and all other agencies having the authority to object of any objection based upon failure of the plat to comply with the statutes or rules that its examination

under sub. (2) is authorized to cover, or, if there is no objection, it shall so certify on the face of a copy of the plat and return that copy to the department. After each agency and the department have certified that they have no objection or that their objections have been satisfied, the department shall so certify on the face of the plat. If an agency fails to act within 20 days from the date on which it received the copy or copies of the plat, and the department fails to act within 30 days from the date on which it received the copy of the plat, it shall be deemed that there are no objections to the plat and, upon demand, the department shall so certify on the face of the plat.

(4m) In order to facilitate approval of the final plat whenever more than one approval is required, the subdivider or subdivider's agent shall file with each approving authority a true copy of the plat that the subdivider or subdivider's agent submitted to the department.

(7) The department and the state agencies referred to in s. 236.13 (1) may charge reasonable service fees for all or part of the costs of activities and services provided by the department under this section and s. 70.27. A schedule of such fees shall be established by rule by each such agency.

History: 1973 c. 90; 1977 c. 29 s. 1654 (3), (8) (c); 1979 c. 221; 1979 c. 248 ss. 5, 25 (6); 1979 c. 355; 1985 a. 29; 1995 a. 27; 1997 a. 27; 2011 a. 32; 2013 a. 358; 2017 a. 207 s. 5; 2017 a. 364 s. 49.

A "planned public development" under sub. (2) (b) is one that a county board has adopted by ordinance. *Reynolds v. Waukesha County Park & Planning Commission*, 109 Wis. 2d 56, 324 N.W.2d 897 (Ct. App. 1982).

Because sub. (2) (a) grants only to a "town or municipality" within which a plat lies the authority to require public improvements as a condition of plat approval, and a county is not a municipality for purposes of ch. 236, a county may not regulate the size of cul-de-sacs, the length of street blocks, and the location of town roads when the plat is located within a town. *Rogers Development v. Rock County Planning and Development Committee*, 2003 WI App 113, 265 Wis. 2d 214, 666 N.W.2d 504, 02-0017.

236.13 Basis for approval. (1) Approval of the preliminary or final plat shall be conditioned upon compliance with:

(a) The provisions of this chapter.

(b) Any municipal, town, or county ordinance that is in effect when the subdivider submits a preliminary plat, or a final plat if no preliminary plat is submitted.

(d) The rules of the department of safety and professional services relating to lot size and lot elevation necessary for proper sanitary conditions in a subdivision not served by a public sewer, where provision for public sewer service has not been made.

(e) The rules of the department of transportation relating to provision for the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways.

(2) (ad) In this subsection:

1. "Binder course" means the non-surface-level course that is attached to the packed-level gravel course.

2. "Land disturbing activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or nonvegetative soil cover that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of this state. "Land disturbing activity" includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling, and grading activities.

3. "Total cost to complete a public improvement" includes the cost to make and install storm water facilities. "Total cost to complete a public improvement" does not include any of the following:

a. Any fees charged by the governing body of the town or municipality.

b. Land disturbing activities that are necessary to achieve the desired subgrade for public improvements.

(am) 1. a. As a further condition of approval, the governing body of the town or municipality within which the subdivision lies may require that the subdivider make and install any public improvements reasonably necessary or that the subdivider pro-

vide security to ensure that the subdivider will make those improvements within a reasonable time. The governing body may not require the subdivider to provide security at the commencement of a project in an amount that is more than 120 percent of the estimated total cost to complete the required public improvements, as determined under subd. 1d.

b. The subdivider may construct the project in such phases as the governing body of the town or municipality approves, which approval may not be unreasonably withheld. If the subdivider's project will be constructed in phases, the amount of security required by the governing body under subd. 1. a. is limited to the phase of the project that is currently being constructed. The governing body may not require that the subdivider provide any security for improvements sooner than is reasonably necessary before the commencement of the installation of the improvements.

c. If the governing body of the town or municipality requires a subdivider to provide security under subd. 1. a., the governing body may not require the subdivider to provide the security for more than 14 months after the date the public improvements for which the security is provided are substantially completed and upon substantial completion of the public improvements, the amount of the security the subdivider is required to provide may be no more than an amount equal to the total cost to complete any uncompleted public improvements plus 10 percent of the total cost of the completed public improvements.

d. This paragraph applies to all preliminary and final plats, regardless of whether submitted for approval before, on, or after August 1, 2014.

1d. The estimated total cost to complete the required public improvements under subd. 1. shall be determined as follows:

a. A governing body of the town or municipality may provide an initial estimate to the subdivider of the estimated total cost to complete the required public improvements. If the subdivider accepts the initial estimate, then the initial estimate is the estimated total cost to complete the required public improvements.

b. If the governing body of the town or municipality does not provide an initial estimate to the subdivider or the subdivider rejects the initial estimate, the subdivider shall provide the governing body with a bona fide bid from the subdivider's contractor to complete the required public improvements in the event of a default. If the governing body accepts the subdivider's bona fide bid, the bona fide bid is the estimated total cost to complete the required public improvements.

c. If the governing body of the town or municipality rejects the subdivider's bona fide bid, the governing body shall provide the subdivider with an estimate for the cost to complete the public improvements in the event of a default. If the governing body's estimate does not exceed the subdivider's bona fide bid by more than 10 percent, the governing body's estimate is the estimated total cost to complete the required public improvements. If the governing body's estimate exceeds the subdivider's bona fide bid by 10 percent or more, the estimated total cost to complete the required public improvements is the amount agreed upon by the subdivider's engineer and the governing body's engineer.

1m. a. If the governing body of the town or municipality requires a subdivider to provide security under subd. 1. a., the governing body shall accept a performance bond or a letter of credit, or any combination thereof, at the subdivider's option, to satisfy the requirement.

b. The subdivider and the governing body of the town or municipality may agree that all or part of the requirement to provide security under subd. 1. a. may be satisfied by a performance bond provided by the subdivider's contractor that names the town or municipality as an additional obligee provided that the form of the contractor's performance bond is acceptable to the governing body of the town or municipality.

c. Unless the governing body of a town or municipality demonstrates that a bond form does not sufficiently ensure performance in the event of default, the governing body of the town or

functional and jurisdictional studies, urban area and rural area transportation plans, airport master plans and rail plans that apply in the local governmental unit.

(d) *Utilities and community facilities element.* A compilation of objectives, policies, goals, maps and programs to guide the future development of utilities and community facilities in the local governmental unit such as sanitary sewer service, storm water management, water supply, solid waste disposal, on-site wastewater treatment technologies, recycling facilities, parks, telecommunications facilities, power-generating plants and transmission lines, cemeteries, health care facilities, child care facilities and other public facilities, such as police, fire and rescue facilities, libraries, schools and other governmental facilities. The element shall describe the location, use and capacity of existing public utilities and community facilities that serve the local governmental unit, shall include an approximate timetable that forecasts the need in the local governmental unit to expand or rehabilitate existing utilities and facilities or to create new utilities and facilities and shall assess future needs for government services in the local governmental unit that are related to such utilities and facilities.

(e) *Agricultural, natural and cultural resources element.* A compilation of objectives, policies, goals, maps and programs for the conservation, and promotion of the effective management, of natural resources such as groundwater, forests, productive agricultural areas, environmentally sensitive areas, threatened and endangered species, stream corridors, surface water, floodplains, wetlands, wildlife habitat, metallic and nonmetallic mineral resources consistent with zoning limitations under s. 295.20 (2), parks, open spaces, historical and cultural resources, community design, recreational resources and other natural resources.

(f) *Economic development element.* A compilation of objectives, policies, goals, maps and programs to promote the stabilization, retention or expansion, of the economic base and quality employment opportunities in the local governmental unit, including an analysis of the labor force and economic base of the local governmental unit. The element shall assess categories or particular types of new businesses and industries that are desired by the local governmental unit. The element shall assess the local governmental unit's strengths and weaknesses with respect to attracting and retaining businesses and industries, and shall designate an adequate number of sites for such businesses and industries. The element shall also evaluate and promote the use of environmentally contaminated sites for commercial or industrial uses. The element shall also identify county, regional and state economic development programs that apply to the local governmental unit.

(g) *Intergovernmental cooperation element.* A compilation of objectives, policies, goals, maps, and programs for joint planning and decision making with other jurisdictions, including school districts, drainage districts, and adjacent local governmental units, for siting and building public facilities and sharing public services. The element shall analyze the relationship of the local governmental unit to school districts, drainage districts, and adjacent local governmental units, and to the region, the state and other governmental units. The element shall consider, to the greatest extent possible, the maps and plans of any military base or installation, with at least 200 assigned military personnel or that contains at least 2,000 acres, with which the local governmental unit shares common territory. The element shall incorporate any plans or agreements to which the local governmental unit is a party under s. 66.0301, 66.0307 or 66.0309. The element shall identify existing or potential conflicts between the local governmental unit and other governmental units that are specified in this paragraph and describe processes to resolve such conflicts.

(h) *Land-use element.* A compilation of objectives, policies, goals, maps and programs to guide the future development and redevelopment of public and private property. The element shall contain a listing of the amount, type, intensity and net density of existing uses of land in the local governmental unit, such as agri-

cultural, residential, commercial, industrial and other public and private uses. The element shall analyze trends in the supply, demand and price of land, opportunities for redevelopment and existing and potential land-use conflicts. The element shall contain projections, based on the background information specified in par. (a), for 20 years, in 5-year increments, of future residential, agricultural, commercial and industrial land uses including the assumptions of net densities or other spatial assumptions upon which the projections are based. The element shall also include a series of maps that shows current land uses and future land uses that indicate productive agricultural soils, natural limitations for building site development, floodplains, wetlands and other environmentally sensitive lands, the boundaries of areas to which services of public utilities and community facilities, as those terms are used in par. (d), will be provided in the future, consistent with the timetable described in par. (d), and the general location of future land uses by net density or other classifications.

(i) *Implementation element.* A compilation of programs and specific actions to be completed in a stated sequence, including proposed changes to any applicable zoning ordinances, official maps, or subdivision ordinances, to implement the objectives, policies, plans and programs contained in pars. (a) to (h). The element shall describe how each of the elements of the comprehensive plan will be integrated and made consistent with the other elements of the comprehensive plan, and shall include a mechanism to measure the local governmental unit's progress toward achieving all aspects of the comprehensive plan. The element shall include a process for updating the comprehensive plan. A comprehensive plan under this subsection shall be updated no less than once every 10 years.

(2m) EFFECT OF ENACTMENT OF A COMPREHENSIVE PLAN, CONSISTENCY REQUIREMENTS. (a) The enactment of a comprehensive plan by ordinance does not make the comprehensive plan by itself a regulation.

(b) A conditional use permit that may be issued by a political subdivision does not need to be consistent with the political subdivision's comprehensive plan.

(3) ORDINANCES THAT MUST BE CONSISTENT WITH COMPREHENSIVE PLANS. Except as provided in sub. (3m), beginning on January 1, 2010, if a local governmental unit enacts or amends any of the following ordinances, the ordinance shall be consistent with that local governmental unit's comprehensive plan:

(g) Official mapping ordinances enacted or amended under s. 62.23 (6).

(h) Local subdivision ordinances enacted or amended under s. 236.45 or 236.46.

(j) County zoning ordinances enacted or amended under s. 59.69.

(k) City or village zoning ordinances enacted or amended under s. 62.23 (7).

(L) Town zoning ordinances enacted or amended under s. 60.61 or 60.62.

(q) Shorelands or wetlands in shorelands zoning ordinances enacted or amended under s. 59.692, 61.351, 61.353, 62.231, or 62.233.

(3m) DELAY OF CONSISTENCY REQUIREMENT. (a) If a local governmental unit has not adopted a comprehensive plan before January 1, 2010, the local governmental unit is exempt from the requirement under sub. (3) if any of the following applies:

1. The local governmental unit has applied for but has not received a comprehensive planning grant under s. 16.965 (2), and the local governmental unit adopts a resolution stating that the local governmental unit will adopt a comprehensive plan that will take effect no later than January 1, 2012.

2. The local governmental unit has received a comprehensive planning grant under s. 16.965 (2) and has been granted an extension of time under s. 16.965 (5) to complete comprehensive planning.

66.1001 **MUNICIPAL LAW**

Updated 17–18 Wis. Stats. 128

the local governmental units and political subdivisions identified in that section. OAG 3–10.

66.10013 Housing affordability report. (1) In this section, “municipality” means a city or village with a population of 10,000 or more.

(2) Not later than January 1, 2020, a municipality shall prepare a report of the municipality’s implementation of the housing element of the municipality’s comprehensive plan under s. 66.1001. The municipality shall update the report annually, not later than January 31. The report shall contain all of the following:

(a) The number of subdivision plats, certified survey maps, condominium plats, and building permit applications approved in the prior year.

(b) The total number of new residential dwelling units proposed in all subdivision plats, certified survey maps, condominium plats, and building permit applications that were approved by the municipality in the prior year.

(c) A list and map of undeveloped parcels in the municipality that are zoned for residential development.

(d) A list of all undeveloped parcels in the municipality that are suitable for, but not zoned for, residential development, including vacant sites and sites that have potential for redevelopment, and a description of the zoning requirements and availability of public facilities and services for each property.

(e) An analysis of the municipality’s residential development regulations, such as land use controls, site improvement requirements, fees and land dedication requirements, and permit procedures. The analysis shall calculate the financial impact that each regulation has on the cost of each new subdivision. The analysis shall identify ways in which the municipality can modify its construction and development regulations, lot sizes, approval processes, and related fees to do each of the following:

1. Meet existing and forecasted housing demand.
2. Reduce the time and cost necessary to approve and develop a new residential subdivision in the municipality by 20 percent.

(3) A municipality shall post the report under sub. (2) on the municipality’s Internet site on a web page dedicated solely to the report and titled “Housing Affordability Analysis.”

History: 2017 a. 243.

66.10014 New housing fee report. (1) In this section, “municipality” means a city or village with a population of 10,000 or more.

(2) Not later than January 1, 2020, a municipality shall prepare a report of the municipality’s residential development fees. The report shall contain all of the following:

(a) Whether the municipality imposes any of the following fees or other requirements for purposes related to residential construction, remodeling, or development and, if so, the amount of each fee:

1. Building permit fee.
2. Impact fee.
3. Park fee.
4. Land dedication or fee in lieu of land dedication requirement.
5. Plat approval fee.
6. Storm water management fee.
7. Water or sewer hook–up fee.

(b) The total amount of fees under par. (a) that the municipality imposed for purposes related to residential construction, remodeling, or development in the prior year and an amount calculated by dividing the total amount of fees under this paragraph by the number of new residential dwelling units approved in the municipality in the prior year.

(3) (a) A municipality shall post the report under sub. (2) on the municipality’s Internet site on a web page dedicated solely to the report and titled “New Housing Fee Report.” If a municipality

does not have an Internet site, the county in which the municipality is located shall post the information under this paragraph on its Internet site on a web page dedicated solely to development fee information for the municipality.

(b) A municipality shall provide a copy of the report under sub. (2) to each member of the governing body of the municipality.

(4) If a fee or the amount of a fee under sub. (2) (a) is not properly posted as required under sub. (3) (a), the municipality may not charge the fee.

History: 2017 a. 243.

66.10015 Limitation on development regulation authority and down zoning. (1) **DEFINITIONS.** In this section:

(a) “Approval” means a permit or authorization for building, zoning, driveway, stormwater, or other activity related to a project.

(as) “Down zoning ordinance” means a zoning ordinance that affects an area of land in one of the following ways:

1. By decreasing the development density of the land to be less dense than was allowed under its previous usage.
2. By reducing the permitted uses of the land, that are specified in a zoning ordinance or other land use regulation, to fewer uses than were allowed under its previous usage.

(b) “Existing requirements” means regulations, ordinances, rules, or other properly adopted requirements of a political subdivision that are in effect at the time the application for an approval is submitted to the political subdivision.

(bs) “Members–elect” means those members of the governing body of a political subdivision, at a particular time, who have been duly elected or appointed for a current regular or unexpired term and whose service has not terminated by death, resignation, or removal from office.

(c) “Political subdivision” means a city, village, town, or county.

(d) “Project” means a specific and identifiable land development that occurs on defined and adjacent parcels of land, which includes lands separated by roads, waterways, and easements.

(e) “Substandard lot” means a legally created lot or parcel that met any applicable lot size requirements when it was created, but does not meet current lot size requirements.

(f) “Zoning ordinance” means an ordinance enacted by a political subdivision under s. 59.69, 60.61, 60.62, 61.35, or 62.23.

(2) **USE OF EXISTING REQUIREMENTS.** (a) Except as provided under par. (b) or s. 66.0401, if a person has submitted an application for an approval, the political subdivision shall approve, deny, or conditionally approve the application solely based on existing requirements, unless the applicant and the political subdivision agree otherwise. An application is filed under this section on the date that the political subdivision receives the application.

(b) If a project requires more than one approval or approvals from one or more political subdivisions and the applicant identifies the full scope of the project at the time of filing the application for the first approval required for the project, the existing requirements applicable in each political subdivision at the time of filing the application for the first approval required for the project shall be applicable to all subsequent approvals required for the project, unless the applicant and the political subdivision agree otherwise.

(c) An application for an approval shall expire not less than 60 days after filing if all of the following apply:

1. The application does not comply with form and content requirements.
2. Not more than 10 working days after filing, the political subdivision provides the applicant with written notice of the noncompliance. The notice shall specify the nature of the noncompliance and the date on which the application will expire if the noncompliance is not remedied.
3. The applicant fails to remedy the noncompliance before the date provided in the notice.

(e) Notwithstanding any other law or rule, or any action or proceeding under the common law, no political subdivision may enact or enforce an ordinance or take any other action that prohibits a property owner from doing any of the following:

1. Conveying an ownership interest in a standard lot.
2. Using a standard lot as a building site if all of the following apply:
 - a. The standard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

b. The standard lot or parcel is developed to comply with all other ordinances of the political subdivision.

(3) **DOWN ZONING.** A political subdivision may enact a down zoning ordinance only if the ordinance is approved by at least two-thirds of the members–elect, except that if the down zoning ordinance is requested, or agreed to, by the person who owns the land affected by the proposed ordinance, the ordinance may be enacted by a simple majority of the members–elect.

(4) Notwithstanding the authority granted under ss. 59.69, 60.61, 60.62, 61.35, and 62.23, no political subdivision may enact or enforce an ordinance or take any other action that requires one or more lots to be merged with another lot, for any purpose, without the consent of the owners of the lots that are to be merged.

(5) **EXPIRATION DATES.** A political subdivision may not establish an expiration date for an approval related to a planned development district of less than 5 years after the date of the last approval required for completion of the project. This section does not prohibit a political subdivision from establishing timelines for completion of work related to an approval.

(6) **ZONING LIMITATIONS, INSPECTIONS.** (a) If a political subdivision or a utility district requires the installation of a water meter station for a political subdivision, neither the political subdivision nor the utility district may require a developer to install a water meter that is larger than a utility–type box, and may not require a developer to include heating, air conditioning, or a restroom in the water meter station. Any requirements for such a project that go beyond the limitations specified in this paragraph must be funded entirely by the political subdivision or utility district.

(b) 1. If a political subdivision employs a building inspector to enforce its zoning ordinance or other ordinances related to building, and a developer requests the building inspector to perform an inspection that is part of the inspector's duties, the inspector shall complete the inspection not later than 14 business days after the building inspector receives the request for an inspection.

2. If a building inspector does not complete a requested inspection as required under subd. 1., the developer may request a state building inspector to provide the requested inspection, provided that the state inspector has a comparable level of zoning and building inspection qualification as the local building inspector.

3. If a developer provides a political subdivision with a certificate of inspection from a state building inspector from an inspection described under subd. 2., which meets the requirements of the inspection that was supposed to be provided by the local building inspector, the political subdivision must accept the certificate provided by the state building inspector as if it had been provided by the political subdivision's building inspector.

History: 2013 a. 74; 2015 a. 391; 2017 a. 67, 68, 243.

66.1002 Development moratoria. (1) DEFINITIONS. In this section:

(a) "Comprehensive plan" has the meaning given in s. 66.1001 (1) (a).

(b) "Development moratorium" means a moratorium on rezoning or approving any subdivision or other division of land by plat or certified survey map that is authorized under ch. 236.

(d) "Municipality" means any city, village, or town.

(e) "Public health professional" means any of the following:

1. A physician, as defined under s. 48.375 (2) (g).

2. A registered professional nurse, as defined under s. 49.498 (1) (L).

(f) "Registered engineer" means an individual who satisfies the registration requirements for a professional engineer as specified in s. 443.04.

(2) **MORATORIUM ALLOWED.** Subject to the limitations and requirements specified in this section, a municipality may enact a development moratorium ordinance if the municipality has enacted a comprehensive plan, is in the process of preparing its comprehensive plan, is in the process of preparing a significant amendment to its comprehensive plan in response to a substantial change in conditions in the municipality, or is exempt from the requirement as described in s. 66.1001 (3m), and if at least one of the following applies:

(a) The municipality's governing body adopts a resolution stating that a moratorium is needed to prevent a shortage in, or the overburdening of, public facilities located in the municipality and that such a shortage or overburdening would otherwise occur during the period in which the moratorium would be in effect, except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer stating that in his or her opinion the possible shortage or overburdening of public facilities justifies the need for a moratorium.

(b) The municipality's governing body adopts a resolution stating that a moratorium is needed to address a significant threat to the public health or safety that is presented by a proposed or anticipated activity specified under sub. (4), except that the governing body may not adopt such a resolution unless it obtains a written report from a registered engineer or public health professional stating that in his or her opinion the proposed or anticipated activity specified under sub. (4) presents such a significant threat to the public health or safety that the need for a moratorium is justified.

(3) **ORDINANCE REQUIREMENTS.** (a) An ordinance enacted under this section shall contain at least all of the following elements:

1. A statement describing the problem giving rise to the need for the moratorium.

2. A statement of the specific action that the municipality intends to take to alleviate the need for the moratorium.

3. Subject to par. (b), the length of time during which the moratorium is to be in effect.

4. A statement describing how and why the governing body decided on the length of time described in subd. 3.

5. A description of the area in which the ordinance applies.

6. An exemption for any activity specified under sub. (4) that would have no impact, or slight impact, on the problem giving rise to the need for the moratorium.

(b) 1. A development moratorium ordinance may be in effect only for a length of time that is long enough for a municipality to address the problem giving rise to the need for the moratorium but, except as provided in subd. 2., the ordinance may not remain in effect for more than 12 months.

2. A municipality may amend the ordinance one time to extend the moratorium for not more than 6 months if the municipality's governing body determines that such an extension is necessary to address the problem giving rise to the need for the moratorium.

(c) A municipality may not enact a development moratorium ordinance unless it holds at least one public hearing at which the proposed ordinance is discussed. The public hearing must be preceded by a class 1 notice under ch. 985, the notice to be at least 30 days before the hearing. The municipality may also provide notice of the hearing by any other appropriate means. The class 1 notice shall contain at least all of the following:

1. The time, date, and place of the hearing.

2. A summary of the proposed development moratorium ordinance, including the location where the ordinance would apply,

the length of time the ordinance would be in effect, and a statement describing the problem giving rise to the need for the moratorium.

3. The name and contact information of a municipal official who may be contacted to obtain additional information about the proposed ordinance.

4. Information relating to how, where, and when a copy of the proposed ordinance may be inspected or obtained before the hearing.

(4) **APPLICABILITY.** A development moratorium ordinance enacted under this section applies to any of the following that is submitted to the municipality on or after the effective date of the ordinance:

(a) A request for rezoning.

(c) A plat or certified survey map.

(d) A subdivision plat or other land division.

History: 2011 a. 144.

66.1003 Discontinuance of a public way. (1) In this section, “public way” means all or any part of a road, street, slip, pier, lane or paved alley.

(2) The common council of any city, except a 1st class city, or a village or town board may discontinue all or part of a public way upon the written petition of the owners of all the frontage of the lots and lands abutting upon the public way sought to be discontinued, and of the owners of more than one-third of the frontage of the lots and lands abutting on that portion of the remainder of the public way which lies within 2,650 feet of the ends of the portion to be discontinued, or lies within so much of that 2,650 feet as is within the corporate limits of the city, village or town. The beginning and ending of an alley shall be considered to be within the block in which it is located. This subsection does not apply to a highway upon the line between 2 towns that is subject to s. 82.21.

(3) The common council of any city, except a 1st class city, or a village or town board may discontinue all or part of an unpaved alley upon the written petition of the owners of more than 50 percent of the frontage of the lots and lands abutting upon the portion of the unpaved alley sought to be discontinued. The beginning and ending of an unpaved alley shall be considered to be within the block in which it is located. This subsection does not apply to a highway upon the line between 2 towns that is subject to s. 82.21.

(4) (a) Notwithstanding subs. (2) and (3), proceedings covered by this section may be initiated by the common council or village or town board by the introduction of a resolution declaring that since the public interest requires it, a public way or an unpaved alley is vacated and discontinued. No discontinuance of a public way under this subsection may result in a landlocked parcel of property.

(b) A hearing on the passage of a resolution under par. (a) shall be set by the common council or village or town board on a date which shall not be less than 40 days after the date on which the resolution is introduced. Notice of the hearing shall be given as provided in sub. (8) (b), except that in addition notice of the hearing shall be served on the owners of all of the frontage of the lots and lands abutting upon the public way or unpaved alley sought to be discontinued in a manner provided for the service of summons in circuit court at least 30 days before the hearing. When service cannot be made within the city, village or town, a copy of the notice shall be mailed to the owner’s last-known address at least 30 days before the hearing.

(c) Except as provided in this paragraph, no discontinuance of the whole or any part of a public way may be ordered under this subsection if a written objection to the proposed discontinuance is filed with the city, village or town clerk by any of the owners abutting on the public way sought to be discontinued or by the owners of more than one-third of the frontage of the lots and lands abutting on the remainder of the public way which lies within 2,650 feet from the ends of the public way proposed to be discontinued or which lies within that portion of the 2,650 feet that is within the corporate limits of the city, village or town. If a written

objection is filed, the discontinuance may be ordered only by the favorable vote of two-thirds of the members of the common council or village or town board voting on the proposed discontinuance. An owner of property abutting on a discontinued public way whose property is damaged by the discontinuance may recover damages as provided in ch. 32. The beginning and ending of an alley shall be considered to be within the block in which it is located.

(d) No discontinuance of an unpaved alley shall be ordered if a written objection to a proposed discontinuance is filed with the city, village or town clerk by the owner of one parcel of land that abuts the portion of the alley to be discontinued and if the alley provides the only access to off-street parking for the parcel of land owned by the objector.

(5) For the purpose of this section, the narrowing, widening, extending or other alteration of any road, street, lane or alley does not constitute a discontinuance of any part of the former road, street, lane or alley, including any right-of-way, which is included within the right-of-way for the new road, street, lane or alley.

(6) Whenever any of the lots or lands subject to this section is owned by the state, county, city, village or town, or by a minor or incompetent person, or the title to the lots or lands is held in trust, petitions for discontinuance or objections to discontinuance may be signed by the governor, chairperson of the board of supervisors of the county, mayor of the city, president of the village, chairperson of the town board, guardian of the minor or incompetent person, or the trustee, respectively, and the signature of any private corporation may be made by its president, secretary or other principal officer or managing agent.

(7) The city council or village or town board may by resolution discontinue any alley or any portion of an alley which has been abandoned, at any time after the expiration of 5 years from the date of the recording of the plat by which it was dedicated. Failure or neglect to work or use any alley or any portion of an alley for a period of 5 years next preceding the date of notice provided for in sub. (8) (b) shall be considered an abandonment for the purpose of this section.

(8) (a) Upon receiving a petition under sub. (2) or (3) or upon the introduction of a resolution under sub. (4), the city, village, town, or county shall deliver a copy of the petition or resolution to all of the following:

1. The secretary of transportation, if the public way or unpaved alley that is the subject of the petition or resolution is located within one-quarter mile of a state trunk highway or connecting highway.

2. The commissioner of railroads, if there is a railroad highway crossing within the portion of the public way that is the subject of the petition or resolution.

(b) Notice stating when and where the petition or resolution under this section will be acted upon and stating what public way or unpaved alley is proposed to be discontinued shall be published as a class 3 notice under ch. 985.

(9) In proceedings under this section, s. 840.11 shall be considered as a part of the proceedings.

(10) Notwithstanding ss. 82.10 and 82.21, no city council or county, village, or town board may discontinue a highway when the discontinuance would deprive a landowner or a public school of all access to a highway.

History: 1973 c. 189 s. 20; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 46; 1993 a. 184, 246, 491; 1995 a. 239; 1999 a. 150 ss. 265, 337 to 343; Stats. 1999 s. 66.1003; 2003 a. 214; 2009 a. 107, 223.

NOTE: 2003 Wis. Act 214, which affected this section, contains extensive explanatory notes.

Cross-reference: See s. 236.43 for other provisions for vacating streets.

The enactment of sub. (2m) [now sub. (5)] did not eliminate any vested rights of abutting property owners. *Miller v. City of Wauwatosa*, 87 Wis. 2d 676, 275 N.W.2d 876 (1979).

An abutting property owner under sub. (2) (c) [now sub. (4) (c)] at the very least must be somehow supporting or sustaining travel on the street. *Voss v. City of Middleton*, 162 Wis. 2d 737, 470 N.W.2d 625 (1991).

The plain language of this section unambiguously shows that a town has authority to proceed under sub. (3) to vacate unpaved alley segments, even when considered in conjunction with ch. 236, which provides for county vacation of platted alleys in



January Case Law Update January 31, 2021

A summary of court opinions decided during the month of January affecting planning in Wisconsin¹

Wisconsin Supreme Court Opinions

Town Subdivision Authority Can Apply Within Shoreland Area

State ex rel. Anderson v. Town of Newbold, 2021 WI 6, involved a dispute arising from the Town of Newbold's denial of a proposed land division of a lake lot because the two resulting lots would not meet the applicable minimum shoreland frontage requirements in the Town's subdivision ordinance. The Town of Newbold, located in Oneida County, is subject to the county shoreland zoning ordinance mandated under State law. State law gives counties the exclusive authority to enact shoreland zoning ordinances applicable to the unincorporated areas (towns) within the county. Section 59.692(1d)(a) of the Wisconsin Statutes prohibits counties from enacting shoreland zoning ordinances that are more restrictive than the standards in the Statutes and the Wisconsin Department of Natural Resources' administrative rule containing standards for county shoreland zoning. The two proposed lots met the frontage requirements in the Oneida County Shoreland Zoning Ordinance.

The owner of the lot, Michael Anderson, challenged the Town's denial arguing the Town's ordinance is invalid because it is more restrictive than the state standards. A majority of the Wisconsin Supreme Court disagreed. The Court noted the language of Section 59.692(1d)(a) of the Wisconsin Statutes only applies to zoning ordinances. The Court found that the Town's frontage requirements were part of a valid subdivision ordinance enacted by the Town under Section 236.45 of the Wisconsin Statutes. The Court cited previous cases acknowledging the distinction between zoning ordinances and subdivision ordinances. The Supreme Court concludes that because the Town's ordinance is not a zoning ordinance, the prohibition on enacting more restrictive shoreland standards did not apply. The Court upheld the Town's denial of the proposed land division.

Justices Hagedorn wrote a dissenting opinion joined by Justice Rebecca Bradley.

Wisconsin Court of Appeals Opinions

Rezoning Did Not Constitute Spot Zoning

Campbell Woods Homeowners' Association, Inc. v. Village of Mt. Pleasant involved a challenge to a rezoning and conditional use permit to allow construction of a senior assisted living facility in a neighborhood of single-family homes. Village zoning staff recommended approving the rezoning because the project was similar to other assisted living facilities in the Village and was consistent with

¹Previous updates are available at: [wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/](https://www.wisconsin.planning.org/policy-and-advocacy/law-updates/case-law-updates/)

of interest

the Village's 2035 Comprehensive Plan. Despite the staff recommendation to approve the rezoning, the plan commission voted to deny the rezoning. The rezoning then went to the Village Board and the Village Board approved the rezoning. In response, the homeowners sued the Village claiming the rezoning constituted illegal spot zoning. The circuit court found the rezoning was not illegal spot zoning. The homeowners appealed the circuit court's decision to the Wisconsin Court of Appeals. The Court of Appeals upheld the circuit court's decision.

The Court of Appeals noted that spot zoning is not *per se* illegal. If a rezoning is in the public interest and not solely for the benefit of the property owner, it is not illegal. The circuit court concluded the rezoning was in the public interest (and not illegal spot zoning) because the Board considered whether the rezoning was consistent with the Village's comprehensive plan and considered issues affecting the whole community. The Court of Appeals also noted the homeowners placed unwarranted weight on the plan commission's rejection of the rezoning which the Board subsequently approved. The Court noted the plan commission's rejection of the project was advisory and not binding on the board.

The case is **not** recommended for publication in the official reports.²

U.S. Court of Appeals for the 7th Circuit Opinions

[No planning-related cases to report.]

² What is an "unpublished" opinion? Under Wisconsin law, an unpublished opinion may not be cited in any Wisconsin state court as precedent or authority. However, an unpublished opinion issued on or after July 1, 2009, may be cited for its persuasive value with certain exceptions. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.

**Village of Harrison
January-21 Zoning Permit Report**

	Current Year			Previous Year		
	Permits	YTD Permits	Estimated Value	YTD Permits	Estimated Value	YTD Estimate Value
Residential						
Single Family	2	2	\$ 640,000	5	\$ 1,405,000	\$ 1,405,000
Two Family (units)	0	(0)	\$ 0	0	\$ 0	\$ 0
Multi Family (units)	0	(0)	\$ 0	0	\$ 0	\$ 0
Additions	3	3	\$ 112,115	0	\$ 0	\$ 0
Acc. Structures	1	1	\$ 3,000	0	\$ 0	\$ 0
Miscellaneous	2	2	\$ 10,000	3	\$ 26,934	\$ 26,934
Total Residential	8	8	\$ 765,115	8	\$ 1,431,934	\$ 1,431,934
Com./Ind.						
New	1	1	\$ 550,000	0	\$ 0	\$ 0
Additions	0	0	\$ 0	0	\$ 0	\$ 0
Acc. Structures	0	0	\$ 0	0	\$ 0	\$ 0
Miscellaneous	0	0	\$ 0	1	\$ 7,600	\$ 7,600
Total Com./Ind.	1	1	\$ 550,000	1	\$ 7,600	\$ 7,600
Combined Total	9	9	\$ 1,315,115	9	\$ 1,439,534	\$ 1,439,534

Number of Vacant Lots Remaining 220