

AGENDA  
CITY OF BERLIN PLAN COMMISSION  
TUESDAY AUGUST 25, 2020 6:00 P.M.  
CITY HALL COUNCIL CHAMBERS  
CITY OF BERLIN, WI  
Zoom Link: <https://us02web.zoom.us/j/87578185610>  
Call In: 312 626 6799  
Meeting ID: 875 7818 5610

- 1) Call meeting to order - Roll Call
- 2) Public Participation
- 3) Approval of Minutes –Plan Commission Meeting June 30<sup>th</sup>, 2020
- 4) Public Hearing for Rezone Request for parcel 002-00260-0000, 002-00261-0000, and 002-00264-0000 to C-1.  
Recommendation: Review and recommend to Common Council
- 5) Public Hearing for Rezone Request for parcel 206-01275-0000, 206-01277-0000, 206-01763-0000 from R-1 to A-1  
Recommendation: Review and recommend to Common Council
- 6) Public Hearing for Rezone Request for parcel 206-00323-0000, 206-00321-0000, 206-00320-0000, 206-00325-0000, 206-00326-0000, 206-00315-0000, 206-00314-0000 from R-2 to R-3.  
Recommendation: Review and recommend to Common Council.
- 7) Discussion on Thedacare landscaping plan review  
Recommendation: Action as appropriate
- 8) Review and discuss City of Berlin Official Street Map in regards to Kettle Street and Proposed CSM  
Recommendation: Action as appropriate
- 9) Review and discuss proposed fence ordinance amendments  
Recommendation: Review and recommend to Common Council
- 10) Review and discuss proposed daycare ordinance amendments  
Recommendation: Action as appropriate
- 11) Old Business
- 12) New Business
- 13) Next meeting date –September 29<sup>th</sup>, 2020
- 14) Adjourn

In adherence to the City of Berlin Public Meeting Participation Policy, public participation will be allowed under each agenda item at the discretion of the presiding officer. Attendees must register their intention to participate on either a general comments section or a specific agenda item prior to the meeting by filling out a Registration Card, which can be obtained from the Internet, City Clerk's office or in the City Hall Council Chambers at the podium. Registration Cards should be turned in prior to the meeting to either the presiding officer or City Clerk.  
PLEASE CONTACT LINDSEY IF YOU CANNOT ATTEND - (920) 361-5156

**CITY OF BERLIN PLAN COMMISSION MINUTES**  
**JULY 28<sup>TH</sup>, 2020**  
**CITY OF BERLIN**  
**BERLIN, WISCONSIN**

The July 28<sup>th</sup>, 2020 City Plan Commission meeting was called to order at 6:00 p.m. by acting chairman Erdmann. Roll call present were: Ed Marks, Bobbie Erdmann, Dave Secora, Victoria Hill and Mary Kubiak. Also present was Lindsey Kemnitz. Due to COVID pandemic, Dick Schramer and Attorney Chier attended via zoom.

First item on the agenda was to seat any virtual attendees. Mayor Schramer was attending via zoom. Hill made a motion to seat Mayor Schramer; Secora seconded the motion which was carried by voice vote.

Second item was approval of the June 30<sup>th</sup>, 2020 Plan Commission minutes. Kubiak moved to approve the June 30<sup>th</sup>, 2020 Plan Commission minutes as presented. Marks seconded the motion, which was carried by a voice vote.

Next item was annexation petition and ordinance for parcels 002-00260-0000, 002-00261-0000, and 002-00264-0000. Kemnitz provide the Plan Commission overview of the project stating that staff and City Council has been working with Bruce Bohn and Ducks Unlimited on the land donation. Prior to the City accepting the land donation, it required the land to be annexed in the City.

Secora stated this is only 80 acres, where is the additional land that is being dedicated. Kemnitz explained the remaining land is within the City, it is adjacent to these parcels. Schramer asked the timeline of the donation; Bruce stated the earliest would be mid-October. Marks recommended the annexation petition and ordinance for approval to Common Council for the parcels 002-00260-0000, 002-00261-0000, and 002-00264-0000. Kubiak seconded the motion, which was carried by a voice vote.

The following item was permanent rezone for annexed parcels above. The zoning would be C-1 due to the intended use of the property. Marks made a motion to schedule public hearing for next meeting if approved by City Council. Secora seconded the motion, which was carried by a voice vote.

The next item was to review official street map in regards to Kettle Street and the proposed CSM. Jerry Wick at 216 S. Hunter Street stated he would like to see Kettle Street 66 feet wide and extended to his lots in the rear. He stated the City has been collecting tax on the street so it should be a street. Kittenhole is willing to donate the land with no expense for the City.

Karen Moriarty representing Kittenhole 336 N. Washington Street is willing to donate the land to make 66 feet right of way. Richard Moriarty of 336 N. Washington Street would like to be consistent with other city streets and have it 66 feet wide and a legal street.

Joe & Ann Hoppa stated they have used Kettle Street over 70 years for farming. Joe had a couple of questions: Who owns Kettle Street, who put up barricade on Kettle, and who excavated land between barricade and his land?

Kemnitz provided the plan commission an overview on the purpose of the agenda item. Kemnitz stated she did not get an answer from Green Lake Title about who owns Kettle Street. She recommended not making a decision until the City legally knows who owns it. Erdmann and Marks agreed to wait on a decision until further information. Secora made a motion to postpone until legal information was provided. Marks seconded the motion, which was carried by voice vote.

Next item was rezone request for parcels 206-01275-0000, 206-01277-0000, and 206-01763-0000 from R-1 to A-1. Kubiak made a motion to schedule public hearing for the next plan commission meeting. Marks seconded the motion, which was carried by voice vote.

Following item on the agenda was rezone 206-00323-0000, 206-00321-0000, 206-00320-0000, 206-00325-0000, 206-00326-0000, 206-00315-0000, and 206-00314-0000 from R-2 to R-3. Marks made a motion to schedule public hearing for rezone for the property above for next month. Kubiak seconded the motion, which was carried by voice vote.

Next item was review proposed chicken ordinance amendments. Erdmann explained that this request came in front of Council and directed Attorney Chier to draft changes. Marks had a couple of questions regarding the amount of chickens in the city. Andi Rogers the resident requesting the changes was able to answer the questions. Catrina Burgees was present and expressed how the chickens have impacted her family. Hill asked about the sound of the chickens. Catrina stated not any louder than a dog. Secora asked who enforces it and have there been any issues. Kemnitz stated she does and there has only been one complaint in the three years. Secora made a motion to approve the chicken ordinance amendments and recommend to Common Council. Hill seconded the motion, which was carried by voice vote.

Next item was review of the fence ordinance due to request from resident. Kemnitz explained that full privacy fences are currently not allowed in residential districts and would recommend allowing them in the rear and side yard and still requiring openings in the front yard. Hill asked why it was that way; no one could speak for it. Kubiak questioned if this would be an issue with American Disabilities Act if we don't change the ordinance. Secora expressed could a closed fence be allowed up conditional use permit. Attorney Chier stated the board could do that, the requirements need to be objective. Hill recommended Attorney Chier to draft changes to the fence ordinance to allow closed fences in the rear and side yard. Secora seconded the motion which was carried by a voice vote.

The Plan Commission discussed allowing virtual meeting until December 31, 2020 per ordinance 05-20. Kubiak made a motion to allow anyone to attend virtually to December 31, 2020 for Plan Commission meetings. Secora seconded the motion; voice vote was taken 5 ayes, 1 nay. Motion passed.

The Commission reviewed the daycare changes that Attorney Chier drafted. Hill suggested a maximum amount of kids in the residential districts. Marks suggested a sliding scale for minimum lot size based on the number of kids. They questioned the hours of operations. Kemnitz stated per state regulations night care is considered 10pm to 5am. Marks made a motion to postpone and review once Attorney Chier drafts the changes. Hill seconded the motion, which was carried by voice vote.

No new or old business.

Next meeting date is August 25, 2020

Hill moved to adjourn at 8:17p.m. Marks seconded the motion, which carried by voice vote.

*Lindsey Kemnitz, Community Development Director*

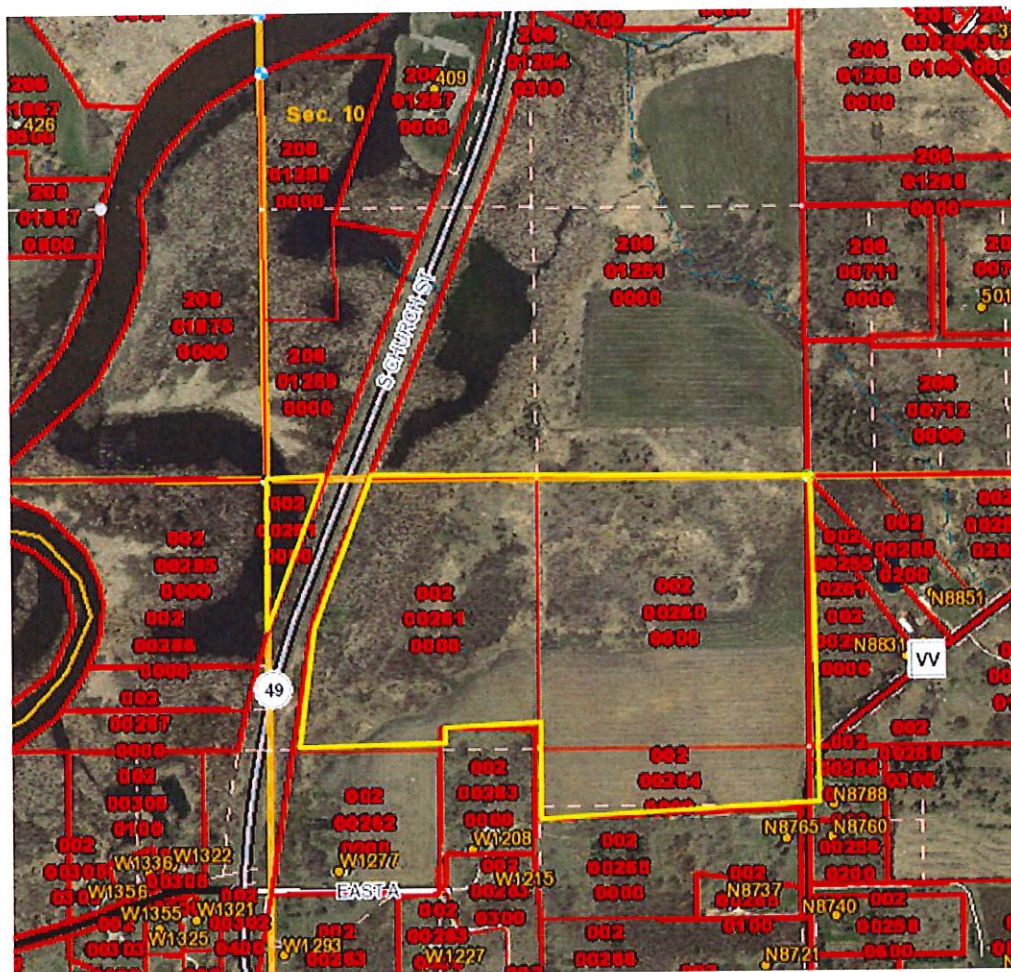
To: Plan Commission

From: Lindsey Kemnitz

Subject: Rezone for parcel 002-00260-0000, 002-00261-0000, and 002-00264-0000 to C-1.

Background:

The subject parcels are from the annexation that was approved last month along HWY 49 south owned by Bohn Farms. When an annexation occurs, there is a temporary zoning put in place. So the purpose of this rezone is for the permanent zoning of the subject parcels. As the subject parcels are intended to be used for public recreation, C-1 allows public recreational facilities. C-2 requires the parcels to be within the floodplain, which they do not meet.





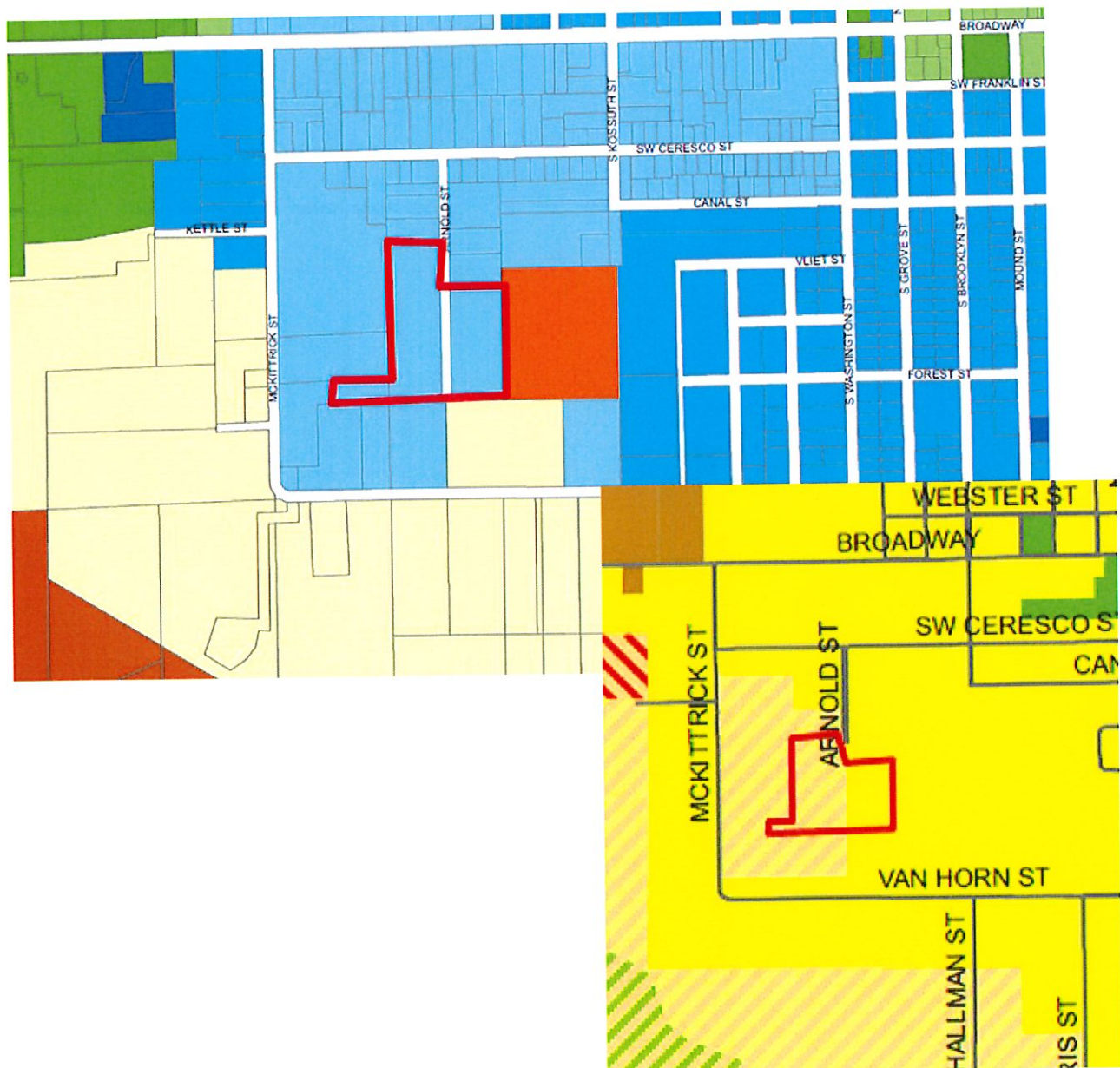
To: Plan Commission

From: Lindsey Kemnitz

Subject: Rezone Request for parcel 206-01275-0000, 206-01277-0000, and 206-01763-0000 from R-1 to A-1.

Background:

The property owner of the three parcels above is requesting the property to be zoned to A-1 from R-1. Currently the parcels are vacant land. The parcel on the east side of Arnold Street is identified as a wetland per DNR and is not buildable, attached is the map. Currently there are no utilities that extend down to the three lots; the utilities could be extended to service these lots. The City Utility Department would not allow someone to put in a well as it is within the wellhead protection area. The City Utility Department has a zone of influence that represents the cone of depression around the well too. Attached are maps and information. The future land use map identifies the whole area to be used for residential use; currently it shows only the western section as agricultural/ vacant.







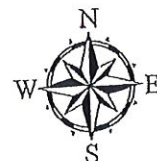
1 inch = 293 feet

Geographic Information System (GIS)  
<https://gis.co.green-lake.wi.us/>

# GIS Viewer Map Green Lake County, WI

Note:

Time: 11:59:40 AM  
Date: 6/25/2020

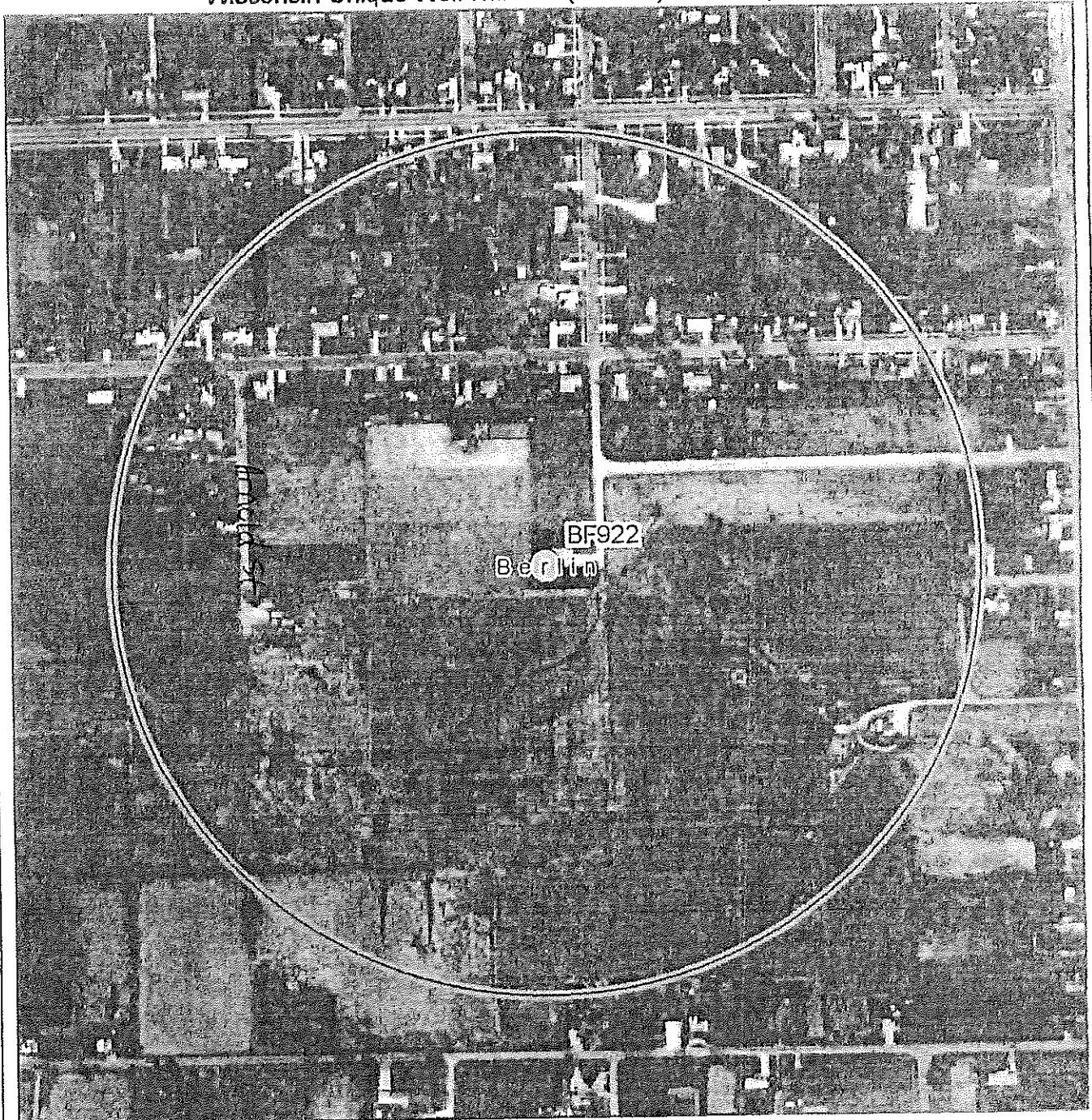











# Figure 5. Potential Contaminant Sources

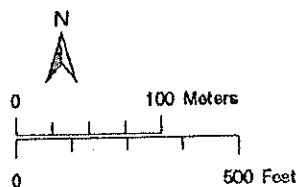
## BERLIN WATERWORKS

Wisconsin Unique Well Number (WUWN): BF922 (Well # 5)



(From WDNR, 2003)

-  Selected Public Water Supply Well
-  Other Water Supply Wells (Public or Private)
-  Source Water Assessment Area
-  Potential Contaminant Source
-  Potential Contaminant Source
-  Potential Contaminant Source
-  Municipalities





### 3. GROUNDWATER RECHARGE AND MOVEMENT

The direction of groundwater movement may be inferred from the regional topography and the slope of the water table or potentiometric surface. Shallow groundwater generally moves in the direction toward which the water table slopes. The best available published map of groundwater elevations for the area (Olcott, 1968), has a scale too small to show details at Berlin, but indicates that groundwater moves generally toward the Fox River (Figure 3). This is supported by a potentiometric contour map that was prepared for the 1996 wellhead protection plan and also by groundwater modeling done for this plan. Actual flow paths are complicated by uneven recharge across the landscape and the heterogeneous nature of the drift. Groundwater captured by the wells is recharged by infiltration of precipitation in an area extending up gradient from each well to groundwater divides that lie on either side of the river.

### 4. ZONE OF INFLUENCE

The zone of influence is the area encompassed within a calculated radius around a well, representing the area of a cone of depression that would develop after 30 days of continuous pumping, assuming that there is no recharge to the groundwater. It simulates theoretical worst-case conditions, in which the cone of depression would reach maximum extent. The zone of influence depends on aquifer thickness and permeability (transmissivity) and the pumping rate. Transmissivity at the well was determined from the "T-Guess" computer solution using pumping test data. Using the Theis equation, and assuming that the wells are pumped half of the time, the zone of influence radii for the three wells are calculated to be:

Well #4	11,666 ft
Well #5	11,496 ft
Well #6	13,789 ft

Calculations of the zone of influence and supporting data are included in Appendix B.

### 5. WELLHEAD PROTECTION AREA

There are different methods of delineating a wellhead protection area, ranging from a simple fixed radius to the use of complex computer models. The fixed radius depends on the pumping rate, time of pumping and the aquifer's porosity and thickness. Using the Volumetric Flow Equation, the radius of a theoretical cylindrical volume of aquifer dewatered during five years of pumping is calculated. Calculated fixed radii for the wells are:

Well #4	2,896 ft
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CITY OF BERLIN  
REQUEST FOR ZONING CHANGE

CITY OF BERLIN

or

EXTRATERRITORIAL ZONING JURISDICTION

We KC Stewart of W1397 County Rd V, Berlin WI  
(name) (mailing address)

hereby request the Plan Commission to recommend to the Common Council of the City of Berlin the approval of a  
change to the Zoning Code/Zoning Map of the City of Berlin pursuant to Chapter 82 the Municipal Code.

Rezone from R-1 to A-1  
(District Classification) (District Classification)

Legal Description: Parcel 200-01275-0000, 200-01277-000, 200-01763-0000  
Arnolds Add Lots 8, 9, 10, 11, 12, 13 + 14 Blk A

Reason for request: My intent is to have a workshop (900-1200sq.ft.), a single family residence,  
a greenhouse and a pond.

Lot Size 6

Present Improvements (Structures etc.) on Lot: Ø

Adjacent Property Zoning (N) R-1 (S) R-1/A-1 (E) R-1 (W) R-1

Such proposed zoning change would be compatible with the character of the neighborhood because:

The 6 acre parcel in question is surrounded on 3 sides by undeveloped  
land including 4 acres of DNR mapped wetland.

6/19/2020 Kathryn C. Stewart  
Date Filed Petitioner/Agent

Rezoning Fee \$300.00 - Fee must accompany this appeal payable to the City of Berlin

FOR OFFICE USE ONLY

Meeting advertised \_\_\_\_\_ Date of Commission Meeting \_\_\_\_\_  
Commission Recommendation Approve / Deny

Special Conditions:

Council Decision Approve / Deny Date \_\_\_\_\_

Special Conditions:

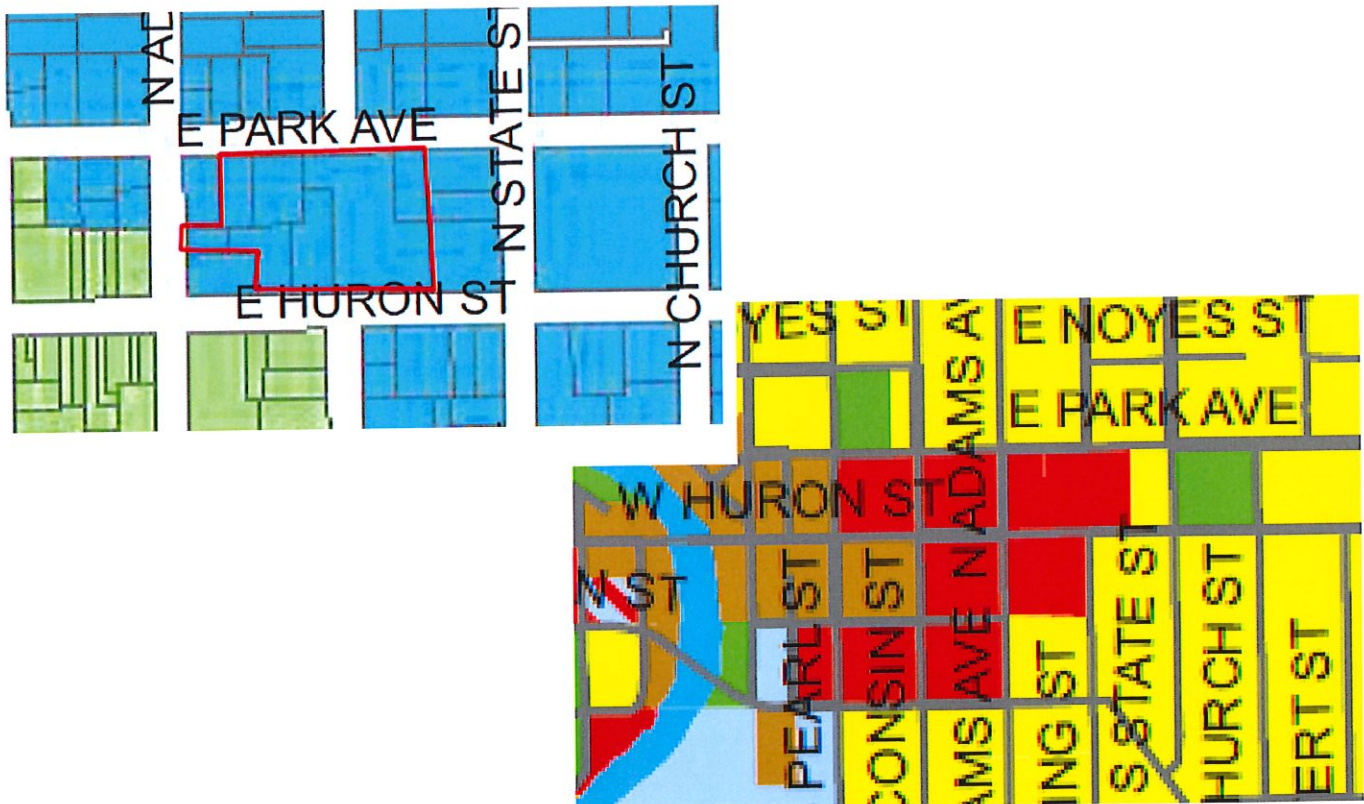
TO: Plan Commission Members

From: Lindsey Kemnitz

RE: Rezone request for 206-00321-0000, 206-00320-0000, 206-00315-0000, 206-00314-0000, 206-00326-0000, 206-00325-0000, and 206-00323-0000

Background:

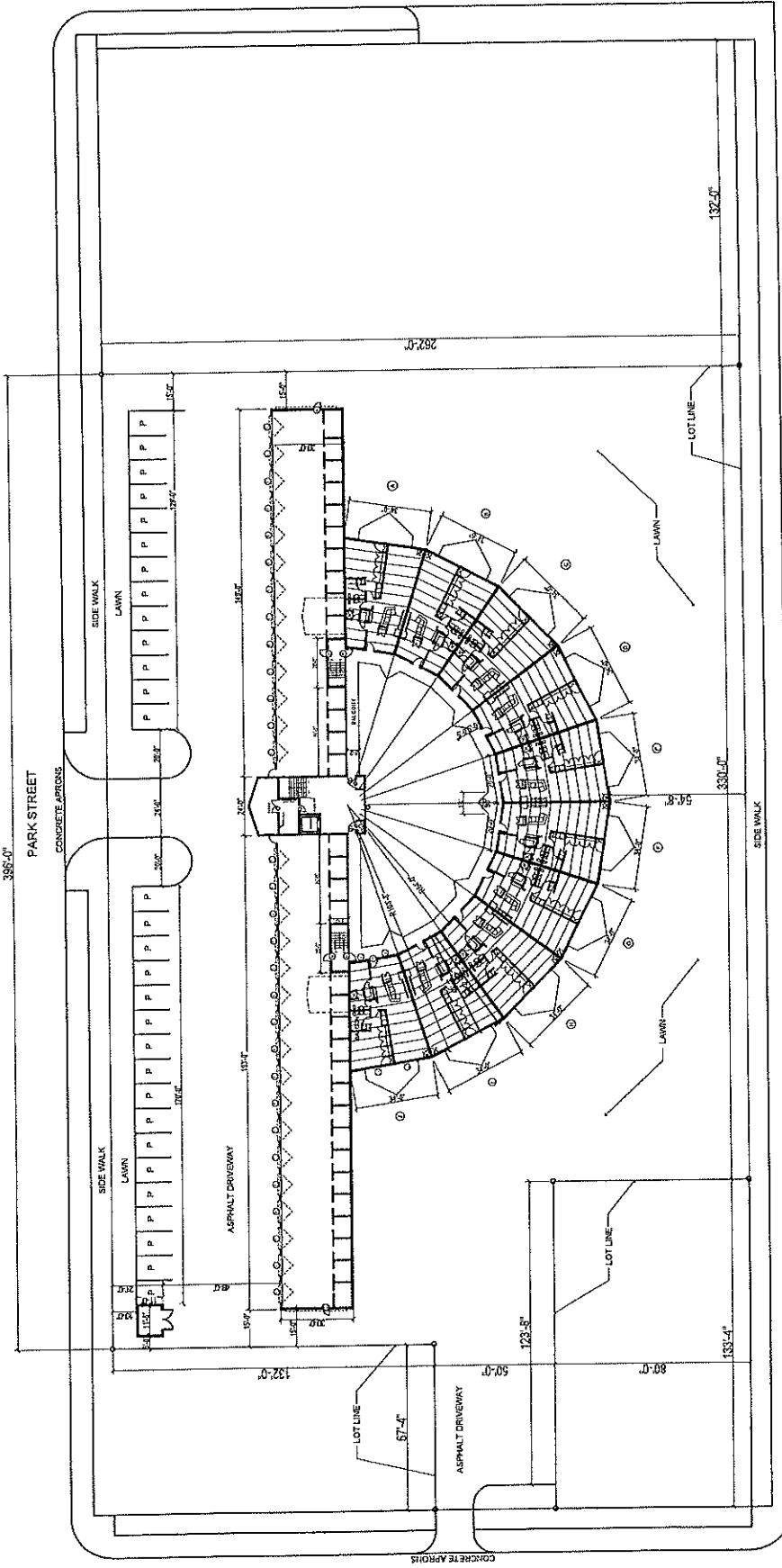
Curt Biggar has applied to rezone the vacant parcels 206-00321-0000, 206-00320-0000, 206-00315-0000, 206-00314-0000, 206-00326-0000, 206-00325-0000, and 206-00323-0000 on Huron Street, State Street, and Park Avenue from R-2 (Residential) to R-3 (Residential). The property is currently owned by Thedacare, but agreed to rezone the parcels contingent on the sale of the parcels to Curt Biggar. The desire is to sell the parcel for future development for residential complex with more than 2 units. The property is adjacent to R-2 property on the north and east side and B-1 to the west and south. Attached is a map with the subject parcels outlined and existing zoning map. The southeast parcel that Chier Law Office is on, is incorrect on the zoning map and is zoned B-1 currently. The future land use map identifies the subject. Attached is the application and a tentative plans for the development.





# PARK MANOR

BERLIN WISCONSIN © BY CURTIS L. BIGGAR ARCHITECT 8/1/2020 LEKSKILL CONSTRUCTION

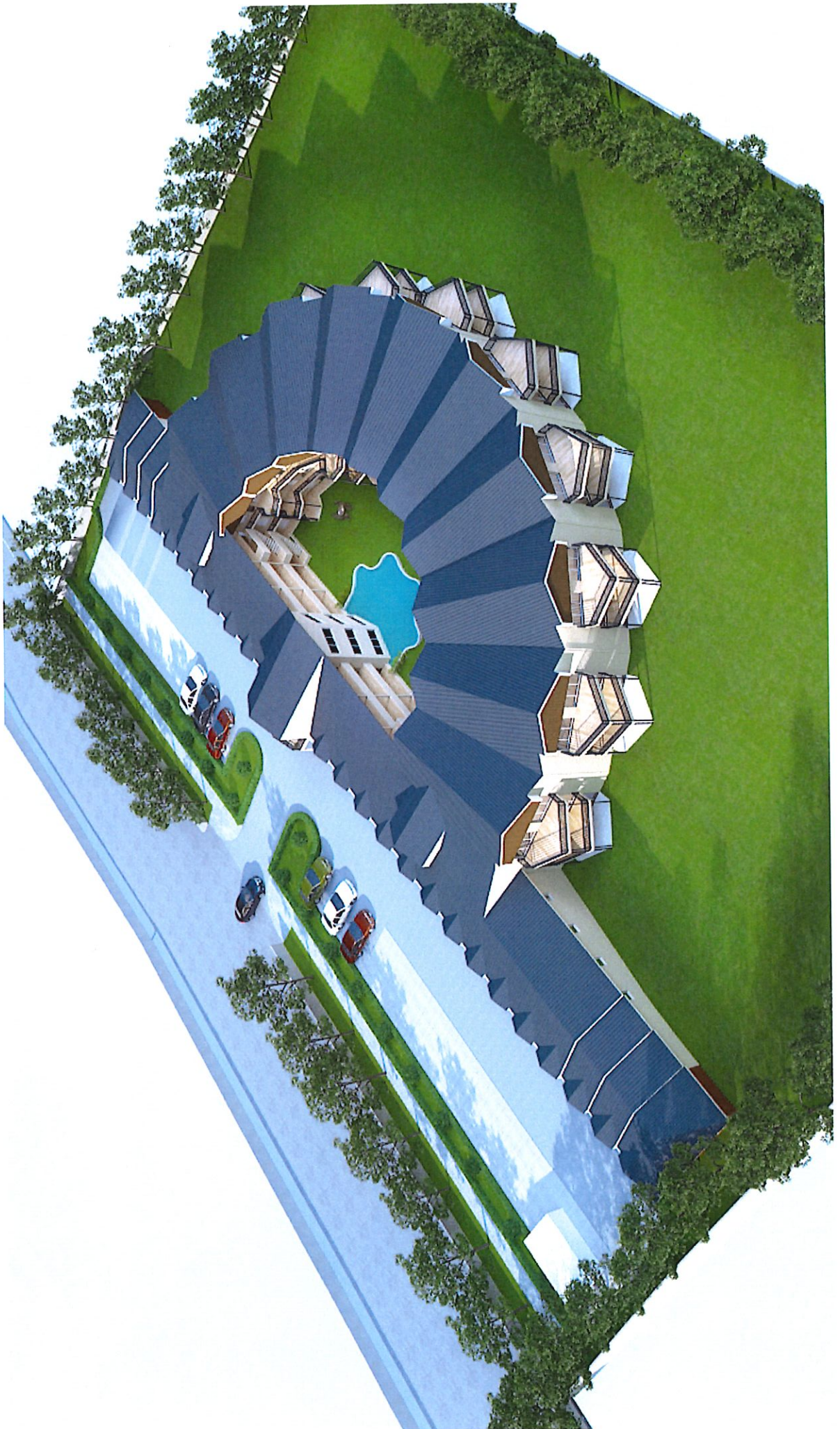


NORTH



SITE PLAN - UTILITIES

2















To: Plan Commission

From: Lindsey Kemnitz

Subject: Discussion on Thedacare landscaping plan

Background:

In June the site plan was reviewed for Thedacare addition. The site plan was approved contingent on a couple of items including the landscaping plan. On August 19<sup>th</sup>, Boldt construction received the approval from Thedacare to start working on the landscaping plan. Boldt Construction is looking to start the demolition, footings, and foundation in the beginning of September. Due to the site plan being approved contingent on the landscaping plan, the building inspector cannot issue any permits to start the work until the Plan Commission approves the landscaping plan.

The City Engineer suggested the Plan Commission to allow the early start permit to be issued to permit Boldt Construction to get started with demolition, footings, and foundation in the beginning of September. Boldt Construction stated they can have the landscaping plan finalized by the September plan commission meeting for review. Once the landscaping plan is approved, the building inspector will then issue the remaining permits.

Recommendation: Approval of the early start permit for the Thedacare addition.



To: Plan Commission

From: Lindsey Kemnitz

Subject: Discuss CSM and Official Street Map for Kettle Street

Background:

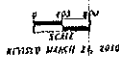
This proposed CSM identified land to be dedicated to the City for additional right of way (ROW) for Kettle Street. Per the City Subdivision code, it is required for the road to be up to city standards before dedicating it to the City. Currently Kettle Street is on the official city street map. According to the proposed CSM the Kettle Street is 50 feet wide by 297 feet. Staff has been conducting research to determine if any portion of Kettle Street was dedicated to the City. Staff has found conflicting information regarding the official dedication of Kettle Street. Attached are several documents with the information. In the early 1900's the City owned property around the "Kettle Street" area. I have reached out to Green Lake Title to see if they can find any records of "Kettle Street" being dedicated to the City and initially they could not find any records of the dedication of "Kettle Street". Green Lake Title was going to look through the records in the early 1900's to determine if the city did own it, I am hoping to have additional information on Tuesday.

The proposed CSM is reducing the lots from three to two. Lot 1 and 2 do not have proper frontage on City Street according to the City subdivision ordinance if "Kettle Street" does not extend the full length. Plan Commission has the authority to approve CSM's that do not comply with the subdivision ordinance, but then the lots are not buildable.

Was "Kettle Street" considered a private driveway for access to the rear rather than Public Street?

Did the City own "Kettle Street" and it continues to function as street for access to the rear parcels after the City sold the parcels?

ORIGINAL MAP BY STRAND ASSOC, DATED 2005  
RESIZED AND UPDATED BY KUNKEL ENGINEERING GROUP, 2010



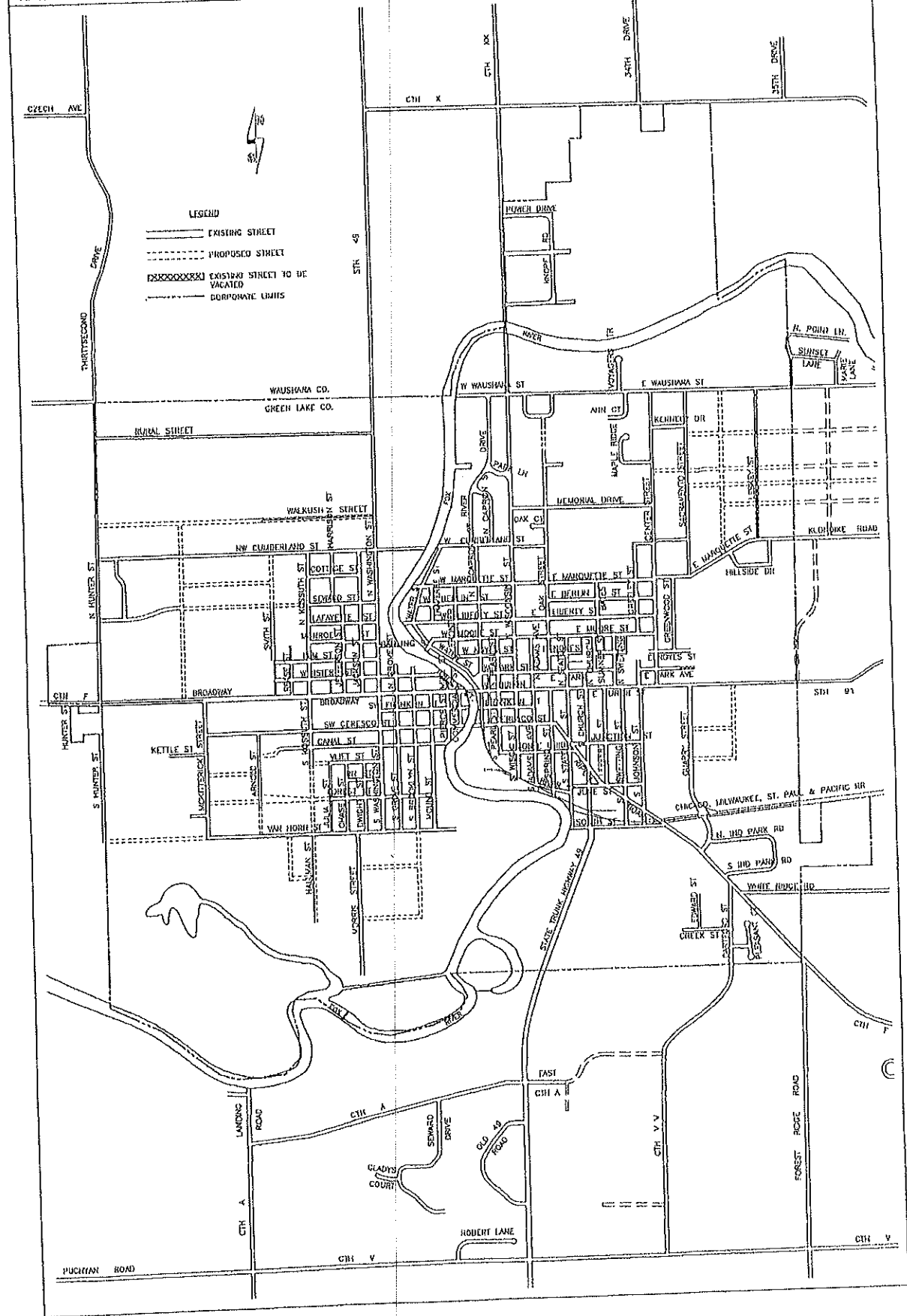
# CITY OF BERLIN, WISCONSIN OFFICIAL STREET MAP

REDUCED SIZE REFERENCE COPY



SHEET 1 OF 1

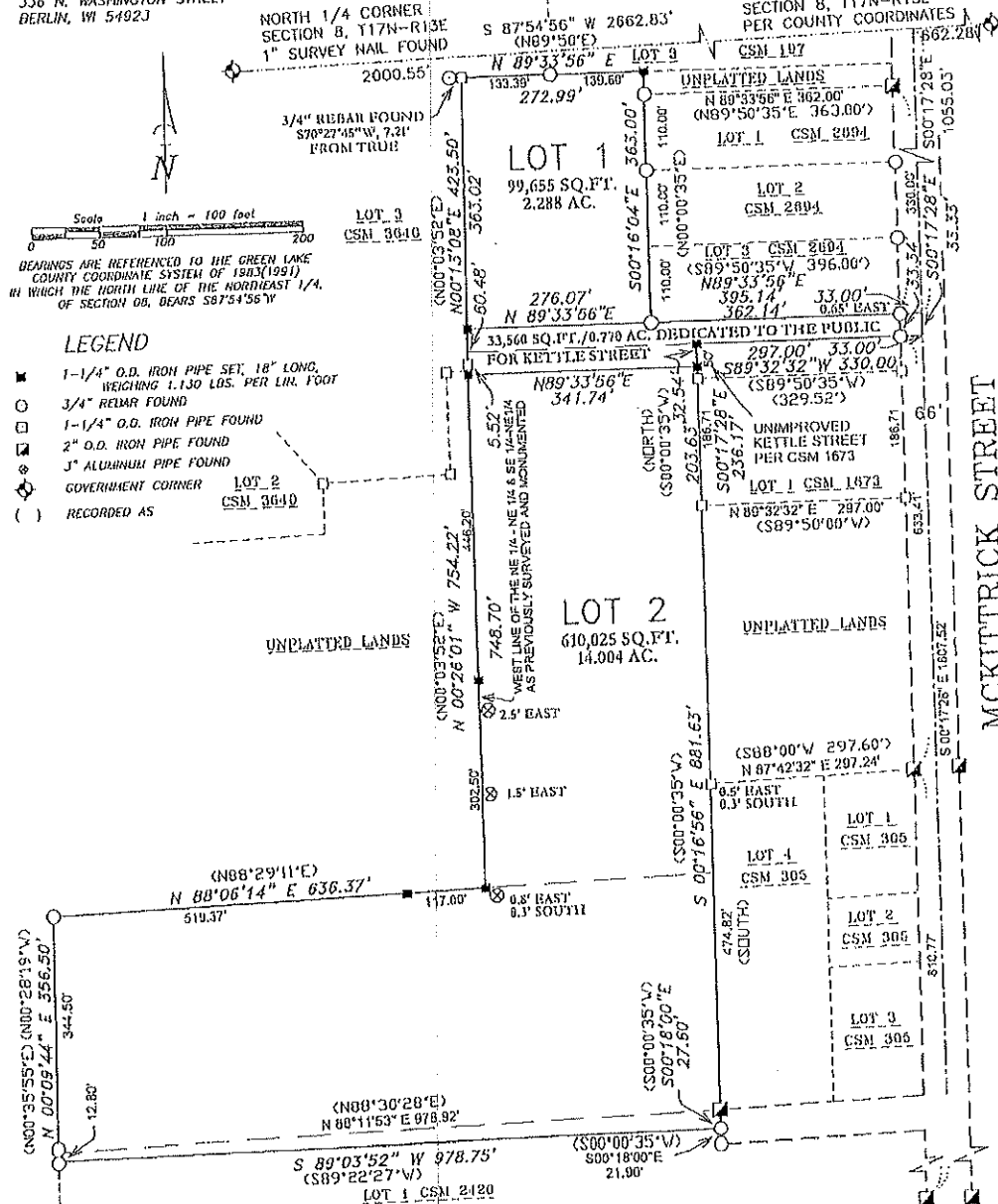
- LEGEND**
- EXISTING STREET
  - PROPOSED STREET
  - EXISTING STREET TO BE VACATED
  - CORPORATE LIMITS



# CERTIFIED SURVEY MAP NO. \_\_\_\_\_

PART OF LOT 1 OF CERTIFIED SURVEY MAP 2420,  
AND PART OF THE NORTHEAST 1/4 OF THE  
NORTHEAST 1/4, PART OF THE SOUTHEAST 1/4 OF  
THE NORTHEAST 1/4, AND PART OF THE  
SOUTHWEST 1/4 OF THE NORTHEAST 1/4, ALL IN  
SECTION 8, TOWNSHIP 17 NORTH, RANGE 13 EAST,  
CITY OF BERLIN, GREEN LAKE COUNTY, WISCONSIN.

SURVEY FOR:  
KAREN MORAVITY  
336 N. WASHINGTON STREET  
BERLIN, WI 54923



Martenson & Eisele, Inc.



101 West Main Street  
Oniro, WI 54903  
www.martenson-eisele.com  
P 920.605.6240 F 920.605.6340

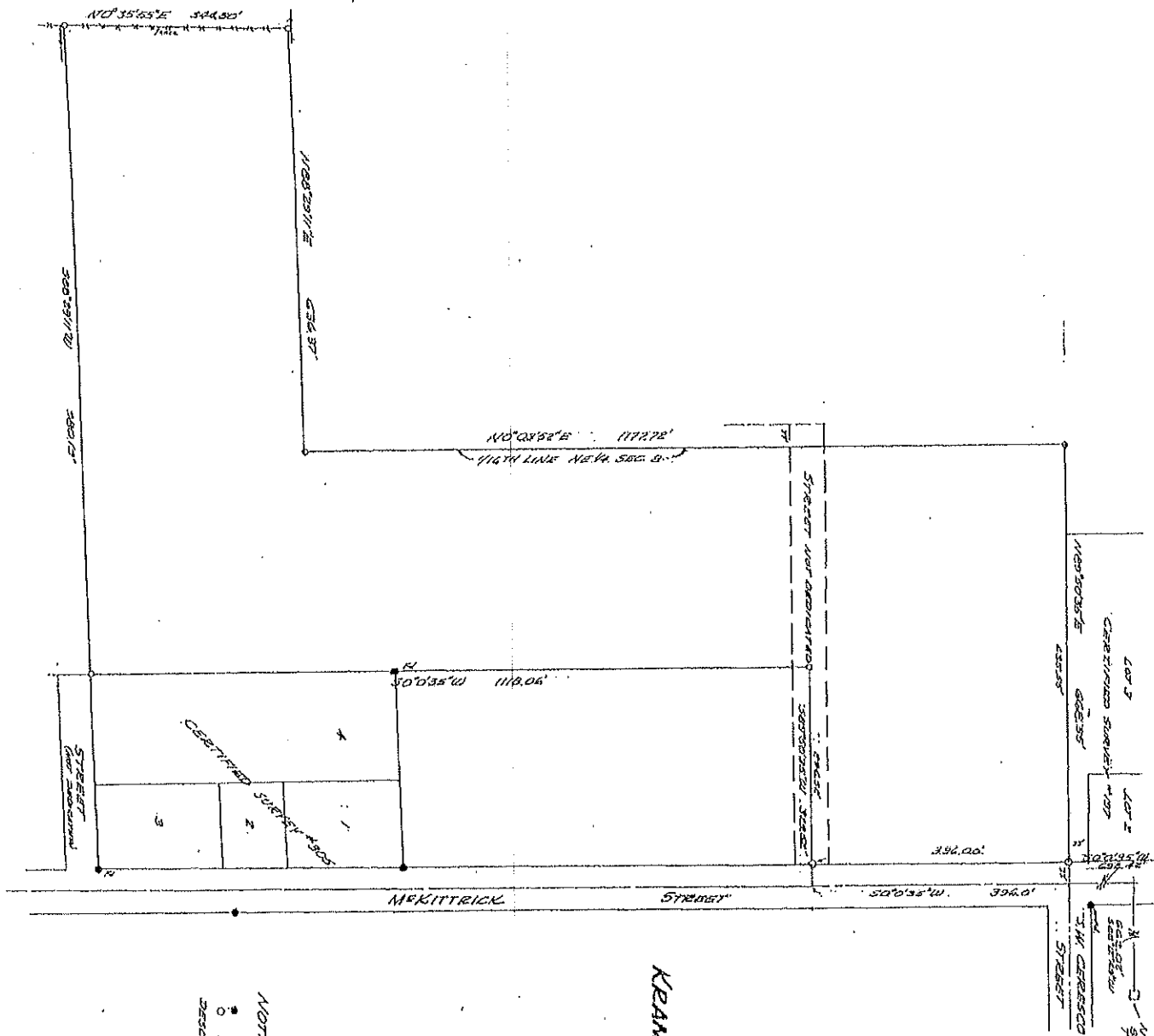
Planning  
Environmental  
Surveying  
Engineering  
Architecture

PROJECT NO. 0-2414-001

FILE 2414001CSM SHEET 1 OF 3

This instrument was drafted by: DSL





SCALE: 1"=100'

COUNTY SURVEYOR'S OFFICE  
 FLT. 04106  
 DATE: 1981

KEAMP CONSTRUCTION CO  
 BOUNDARY SURVEY  
 BERLIN, WIS.



GREEN LAKE SURVEYING CO.  
 506 MILL ST.  
 GREEN LAKE, WIS.  
 294-6666

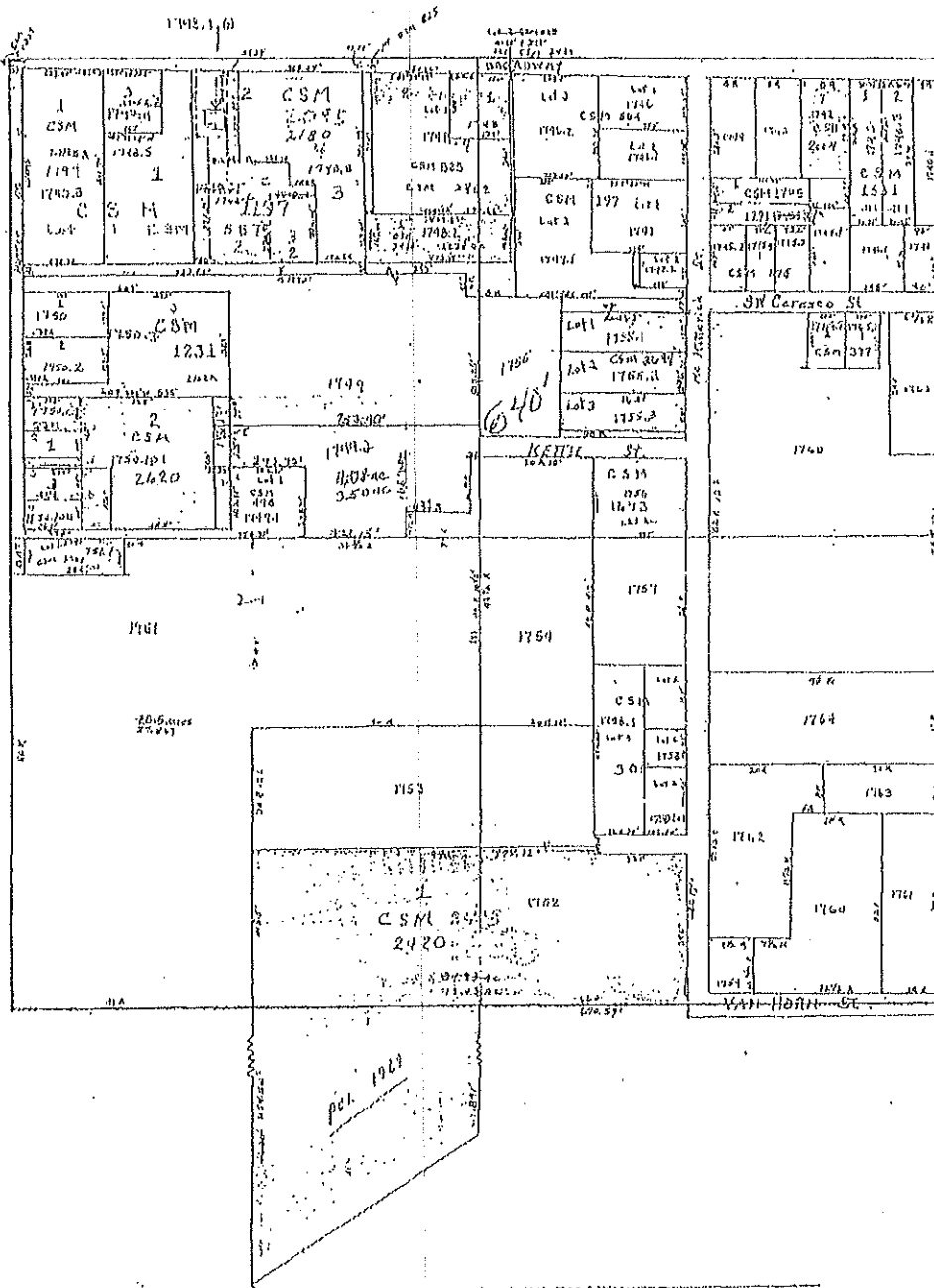
NOTES:

- LOCATED 180' STAKES FOUND
- CHANGES - PLACED
- DESCRIPTION TYPED ON SEPARATE SHEET

114-5  
 1

JOB: 8-1-82

C/Bequif  
NE 1/4 Section 8-17-13



SECTION 8 - 17 - 13

NW 1/4

SECTION 9 - 17 - 13

MC KITTRICK STREET

KETTLE ST.

VAN HORN ST.

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CSM 2649

CSM 2650

CSM 2651

CSM 2652

CSM 2653

CSM





RECORDED ON:  
12/14/2017 01:00PM

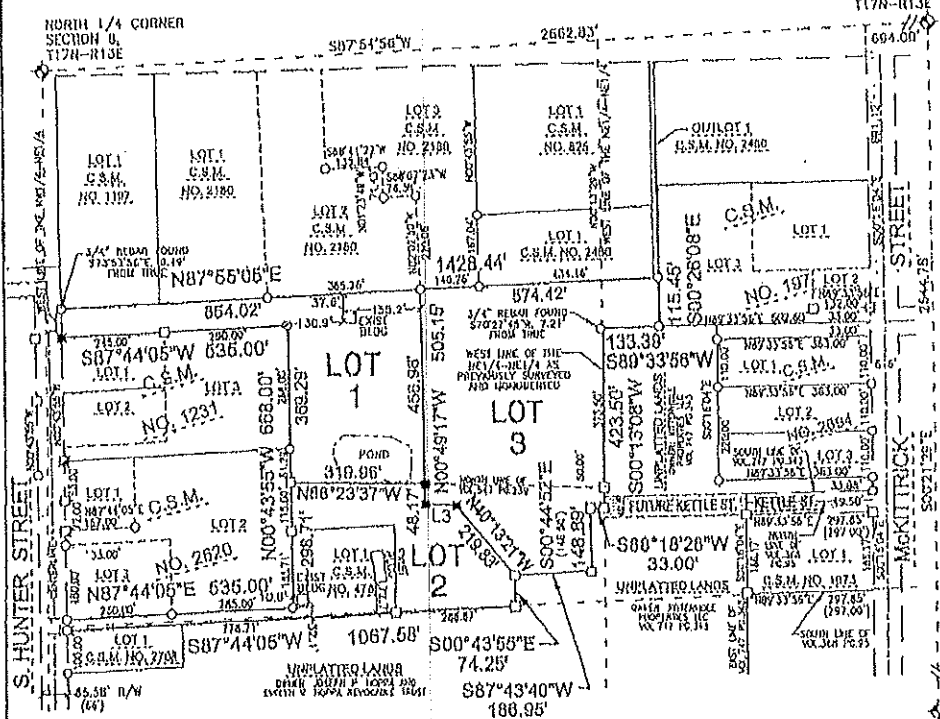
REC FEE: \$30.00

VOL. 21 OF CSM PG. 3640

SARAH GUENTHER  
REGISTER OF DEEDS  
GREEN LAKE, WI  
TRANSFER FEE:

CERTIFIED SURVEY MAP NO. 3640  
ALL OF LOT 1 OF CERTIFIED SURVEY MAP NO. 478, AND  
PART OF THE NORTHEAST 1/4, SOUTHWEST 1/4 AND  
NORTHWEST 1/4 OF THE NORTHEAST 1/4,  
SECTION 8, TOWNSHIP 17 NORTH, RANGE 13 EAST,  
CITY OF BERLIN, GREEN LAKE COUNTY, WISCONSIN.

LOT 1 AREA 178,997 SQ. FT. 4.109 ACRES  
LOT 2 AREA 154,187 SQ. FT. 3.540 ACRES  
LOT 3 AREA 283,631 SQ. FT. 6.511 ACRES

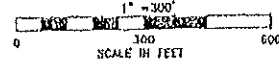


NOTE:  
LOT 3 IS NOT BUILDABLE UNTIL  
SUCH TIME THAT IT IS PROVIDED  
WITH DIRECT VEHICULAR ACCESS  
TO A PUBLIC STREET.

LINK	TABULAR
L1	N00°43'55"W 25.00'
L2	N00°43'55"W 68.03'
L3	N87°19'37"W 72.95'

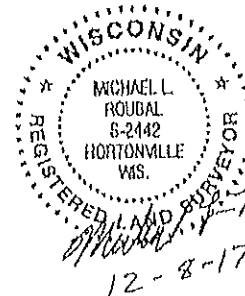
EAST 1/4  
CORNER  
SECTION 8,  
T17N-R13E

BEARINGS ARE REFERENCED TO THE  
GREEN LAKE COUNTY COORDINATE SYSTEM



LEGEND

- 1" O.D. IRON PIPE SET, 18" LONG, WEIGHING 1.13 LBS. PER LINEAL FOOT
- 1" O.D. IRON PIPE FOUND
- ⊠ 2" O.D. IRON PIPE FOUND
- 3/4" O.D. IRON FOUND
- ⊙ GOVERNMENT CORNER
- P.O.B. POINT OF BEGINNING



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Menasha, WI 54952  
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Surveying  
Engineering  
Architecture

SURVEY FOR:  
JERRY WICK  
216 S. HUNTER STREET  
BERLIN, WI 54923

PROJECT NO. D-2220-001  
FILE D-2220-001cam.dwg SHEET 1 OF 4  
THIS INSTRUMENT WAS DRAFTED BY: A. Sullivan

[illegible]

1923:

This is a detailed street map of a section of Chicago, showing a grid of streets and property lots. The map is oriented with North at the top. The streets shown include North Dearborn, North Franklin, North Halsted, North LaSalle, North Madison, North Michigan, North State, North Taylor, and North Wells. The lots are numbered and labeled with names such as Frank Redford, Peter Demuth, Michael Hoppe, Aug. Demuth, Mrs. Peter Clark, Frank Taylor, and C. Keller. The map is a black and white reproduction of a historical document.



AN ORDINANCE AMENDING THE ZONING CODE RELATED TO FENCES

WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance as set forth herein, on [insert applicable date]; and

Comment [M21]: To be determined

WHEREAS, the Plan Commission has recommended to the Common Council to approve the ordinance as set forth herein.

NOW THEREFORE, the Common Council of the City of Berlin do ordain as follows:

Sec. 82-567(c)(1) of the City of Berlin Code of Ordinances shall be amended as follows:

Sec. 82-567. - Fences.

(c) Height.

- (1) In residential districts, ~~only open or lattice closed, privacy type fences or hedges~~ meaning visibility through the fence or hedge is effectively blocked by having open gaps of less than 1/2 inch shall not be permitted ~~except in rear yards and those portions of side yards located within the rear yard~~. Residential fences in side and rear yards shall not exceed six feet in height, with the exception of any portion of side yard fences within the front yard setback area, which shall not exceed four feet in height, without a conditional use permit. Residential fences and hedges located in the front yard or in the front yard setback area shall not exceed four feet in height, without a conditional use permit. A conditional use permit for residential fences and hedges located in the front yard or within the front yard setback area may only permit the fence to be increased to a maximum of six feet in height.

Comment [MC2]: Plan Commission: Lindsey and I discussed this and we weren't totally clear on the Commission's intentions on this. Did you want to limit the privacy fences to rear yards and side yards located in the rear yard? Or did you also want to allow privacy fencing in the side yard up to the front of the house (i.e. everywhere but the front yard). Please clarify this and I can get this language corrected if needed. Currently it is written to allow privacy fencing only in the rear yard and side yards located in the rear yard.

This ordinance shall take effect the day after publication.

The numeric section numbers and headings of any portions of the Code of Ordinances affected by this Ordinance shall be subject to modification in the discretion of the codifier, and the approval of the City Attorney, during codification into the City's current Code of

Ordinances.

Passed, approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

ROLL CALL VOTE:

CITY OF BERLIN

\_\_\_\_ AYES  
\_\_\_\_ NAYS  
\_\_\_\_ ABSENT

BY: \_\_\_\_\_  
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

ATTEST: \_\_\_\_\_  
Jodie Olson, City Clerk

\_\_\_\_\_  
Matthew G. Chier, City Attorney

**AN ORDINANCE AMENDING THE CITY OF BERLIN ZONING CODE RELATING TO CERTAIN REGULATIONS AFFECTING THE LOCATION AND OPERATION OF ADULT AND CHILD DAY CARE FACILITIES**

WHEREAS, the City of Berlin Plan Commission has held a public hearing regarding the ordinance change, as set forth herein, on [insert applicable date]; and

WHEREAS, the Plan Commission recommended to the Common Council the approval of the ordinance change, as set forth herein.

NOW THEREFORE, the Common Council of the City of Berlin do ordain as follows:

Sec. 82-286 of the City of Berlin Code of Ordinances shall be amended as follows:

**Sec. 82-286. - Use regulations.**

The R-1 residential district is intended to provide for single-family residential development and to protect such areas from the encroachment of incompatible uses. The following uses shall be permitted in the R-1 district:

... (6) Home occupations, except for child day care facilities which do not meet the definition of a "family child care home" under Wis. Stat. § 66.1017.

...

Sec. 82-287 of the City of Berlin Code of Ordinances shall be amended as follows:

**Sec. 82-287. - Conditional uses.**

In the R-1 district, conditional uses shall be as follows:

... (3) Subject to the limitations described herein, child day care facilities which do not meet the definition of a "family child care home" under Wis. Stat. § 66.1017, even if such a facility otherwise meets the definition of a home occupation. However, a child day care facility may only be allowed as a conditional use on a lot (or multiple lots owned or controlled by the same person) of a minimum size depending on the maximum number of children for which the facility is licensed by the state of Wisconsin as follows:

Up to 9 children: .2 acre minimum lot size

**Comment [MC1]:** Will insert when date available.

**Comment [MC2]:** So that everyone is aware, a "home occupation" is defined in Sec. 82-4 as an occupation or profession carried on by a member of the family residing on the premises, having no display, other than a home occupation sign, which indicates from the exterior of the premises that the building is being utilized, in whole or part, for any purpose other than that of a dwelling; there is kept no stock in trade nor commodity sold upon the premises; no person is employed other than members of the immediate family residing on the premises; no mechanical equipment is used except that which is permissible for purely domestic or household purposes. The occupation or profession shall not occupy more than 50 percent of the floor area of one story of the dwelling; and there shall be no emission of an odor, gas, smoke, dust or noise that will be detrimental to the residential character of the neighborhood.

**Comment [MC3]:** By adding this exception, all day care facilities, including home occupations except for those that meet the definition of a "family child care home", will now require a conditional use permit, or be completely prohibited (if over the cap on number of kids per lot size) in residential districts. Existing home occupation day cares will be grandfathered under normal zoning grandfathering rules. Wis. Stat. § 66.1017 defines a "family child care home" as: "A dwelling licensed as a child care center by the department of children and families under s. 48.65 where care is provided for not more than 8 children. This statute expressly prohibits municipalities from preventing these types of homes or putting special standards on such homes different than state licensing requirements through zoning regulations." [1]

**Comment [MC4]:** Although I think everyone probably understands this already from our recent discussions about conditional use permits, I wanted to be sure that everyone is aware that Sec. 82-641(a) already sets forth a number of general factors that will apply to the issuance of a CUP for a day care center. That code section reads as follows: [2]

**Comment [LK5]:** I am concerned that a facility may be licensed for 30 children, but they only intend to have 20. Can we delete "for which the facility is licensed by the state of Wisconsin". Language could be added after b. saying contingent on state approved licensing.

**Comment [LK6]:** We can't regulate up to 9 kids. Delete up to 9 children and start with 10-18 children.



10-18 children: .5 acre minimum lot size

19-27 children: .75 acre minimum lot size

28-36 children: 1 acre minimum lot size

Child day care facilities licensed for more than 36 children shall not be allowed as a conditional use in the R-1 district. Also, for conditional use applications for child day care facilities hereunder, the common council shall pursuant to and in addition to any other standards or conditions imposed under Sec. 82-641(b), impose the following standards and conditions:

- a. All outside areas used as part of the operation of the child day care facility shall be bounded on all sides by a closed, privacy fence of the maximum height permitted under Sec. 82-567. However, if closed, privacy fencing is not allowed in certain portions of the lot under Sec. 82-567, then fencing which contains open gaps as small as possible without meeting the definition of closed, privacy fencing under Sec. 82-567 shall be used in such portions of the lot.
- b. Operation of the child day care facility shall be limited to 5:00 a.m. to 10:00 p.m. daily.
- b.c. Approval of the conditional use permit is contingent on being licensed by the State of Wisconsin for child day care facility.

Sec. 82-312 of the City of Berlin Code of Ordinances shall be amended as follows:

#### Sec. 82-312. - Conditional uses.

In the R-2 district, conditional uses shall be as follows:

- ...
- (3) Subject to the limitations described herein, child day care facilities which do not meet the definition of a "family child care home" under Wis. Stat. § 66.1017, even if such a facility otherwise meets the definition of a home occupation. However, a child day care facility may only be allowed as a conditional use on a lot (or multiple lots owned or controlled by the same person) of a minimum size depending on the maximum number of children for which the facility is licensed by the state of Wisconsin as follows:

Up to 9 children: .2 acre minimum lot size

10-18 children: .5 acre minimum lot size

19-27 children: .75 acre minimum lot size

**Comment [LK7]:** Child care facilities in R-1 district are limited to a maximum of 36 children.

Your current language makes it sound like a facility that is licensed for more than 36 kids are not allowed at all. The state licensing states to check with local ordinances, so the facility may be licensed for more than 36 kids at the state level, but the City is limiting it to 36 kids.

**Comment [LK8]:** Board of Appeals

**Comment [MC9]:** Previously, this language simply required "architectural or aesthetic" fencing to bound the outdoor daycare operations. Those terms are not defined in the code. Further, since the purpose of this fencing requirement is to block the view of the playground equipment for the neighbors, it made sense to require closed, privacy fencing, or as close thereto as possible in areas of the lot where such closed, privacy fencing is not allowed. Previously, Sec. 82-567 didn't allow closed, privacy fencing in residential lots, but with a recent ordinance change, it is now allowed in some parts of the lot.

**Comment [MC10]:** This 5am to 10pm time limit is crafted to be the opposite of a "night care facility" as defined by the state, which is 10pm to 5am.

Also, on a side note, I want everyone to be aware that Sec. 82-553 already prohibits any accessory structure, including play structures, in front yards, except for corner lots having rear yards of 20 feet or less. I was going to add similar such restrictions in this new ordinance specially for day care centers, but realized that it wasn't necessary because it was already prohibited.

Also, at the 7/28/20 PC meeting, the PC requested I add a condition which requires the consideration of an off street drop-off requirement depending on traffic safety in the area of the subject lot. The idea was that for lots that are on busy streets, the PC can require an off street drop off, but on non-busy st ... [3]

**Comment [LK11]:** Added this language so it is contingent on the state licensing.

**Comment [LK12]:** I am concerned that a facility may be licensed for 30 children, but they only intend to have 20. Can we delete "for which the facility is licensed by the state of Wisconsin". Language could be added after b. saying contingent on state approved licensing.

**Comment [LK13]:** We can't regulate up to 9 kids. Delete up to 9 children and start with 10-18 children.

28-36 children: 1 acre minimum lot size

Child day care facilities licensed for more than 36 children shall not be allowed as a conditional use in the R-2 district. Also, for conditional use applications for child day care facilities hereunder, the common council shall, pursuant to and in addition to any other standards or conditions imposed under Sec. 82-641(b), impose the following standards and conditions:

- a. All outside areas used as part of the operation of the child day care facility shall be bounded on all sides by a closed, privacy fence of the maximum height permitted under Sec. 82-567. However, if closed, privacy fencing is not allowed in certain portions of the lot under Sec. 82-567, then fencing which contains gaps as small as possible without meeting the definition of closed, privacy fencing under Sec. 82-567 shall be used in such portions or the lot.
- b. Operation of the child day care facility shall be limited to 5:00 a.m. to 10:00 p.m. daily.
- c. Approval of the conditional use permit is contingent on being licensed by the State of Wisconsin for child day care facility.

**Comment [LK14]:** Child care facilities in R-2 district are limited to a maximum of 36 children.

Your current language makes it sound like a facility that is licensed for more than 36 kids are not allowed at all. The state licensing states to check with local ordinances, so the facility may be licensed for more than 36 kids at the state level, but the City is limiting it to 36 kids.

**Comment [LK15]:** Board of appeals

**Comment [LK16]:** Added this language so it is contingent on the state licensing.

Sec. 82-337 of the City of Berlin Code of Ordinances shall be amended as follows:

**Sec. 82-337. - Conditional uses.**

In the R-3 district, conditional uses shall be as follows:

- ...
- (3) Subject to the limitations described herein, child day care facilities which do not meet the definition of a "family child care home" under Wis. Stat. § 66.1017, even if such a facility otherwise meets the definition of a home occupation. However, a child day care facility may only be allowed as a conditional use on a lot (or multiple lots owned or controlled by the same person) of a minimum size depending on the maximum number of children for which the facility is licensed by the state of Wisconsin as follows:

Up to 9 children: .2 acre minimum lot size

10-18 children: .5 acre minimum lot size

19-27 children: .75 acre minimum lot size

28-36 children: 1 acre minimum lot size

**Comment [LK17]:** I am concerned that a facility may be licensed for 30 children, but they only intend to have 20. Can we delete "for which the facility is licensed by the state of Wisconsin". Language could be added after b. saying contingent on state approved licensing.

**Comment [LK18]:** We can't regulate up to 9 kids. Delete up to 9 children and start with 10-18 children.

Child day care facilities licensed for more than 36 children shall not be allowed as a conditional use in the R-3 district. Also, for conditional use applications for child day care facilities hereunder, the common council shall, pursuant to and in addition to any other standards or conditions imposed under Sec. 82-641(b), impose the following standards and conditions:

- a. All outside areas used as part of the operation of the child day care facility shall be bounded on all sides by a closed, privacy fence of the maximum height permitted under Sec. 82-567. However, if closed, privacy fencing is not allowed in certain portions of the lot under Sec. 82-567, then fencing which contains gaps as small as possible without meeting the definition of closed, privacy fencing under Sec. 82-567 shall be used in such portions or the lot.
- b. Operation of the child day care facility shall be limited to 5:00 a.m. to 10:00 p.m. daily.
- c. Approval of the conditional use permit is contingent on being licensed by the State of Wisconsin for child day care facility.

**Comment [LK19]:** Child care facilities in R-3 district are limited to a maximum of 36 children.

Your current language makes it sound like a facility that is licensed for more than 36 kids are not allowed at all. The state licensing states to check with local ordinances, so the facility may be licensed for more than 36 kids at the state level, but the City is limiting it to 36 kids.

**Comment [LK20]:** Board of appeals

**Comment [LK21]:** Added this language so it is contingent on the state licensing.

**Comment [MC22]:** This change is necessary to allow the various expressly permitted business type activities to occur in a residential district, such as schools, clinics, and now day care centers.

**Comment [MC23]:** I just wanted to point out that the code already provides some special limitations on parking in residential districts, so these types of limitations didn't need to be added as part of this new ordinance. Specifically, Secs. 82-682(b)(2) and (3) provide:

(2) In R-1 and R-2 districts, if a principal structure on a lot is a dwelling, then off-street parking shall not be allowed in the front yard of that lot, or in the setback areas for the side or rear yards of that lot, except in driveways provided that the driveway conforms to the requirements of chapter 58, article V.

(3) Off-street parking shall be permitted in all yards and setback areas of lots in districts other than R-1 and R-2, and in R-1 and R-2 districts if a principal structure on the lot is not a dwelling, only after a parking plan for the site has been approved by the plan commission. The plan commission may impose conditions on such approval as reasonably necessary to mitigate negative impacts that the parking may have on neighboring properties or the general public. Such conditions may include, but not be limited to, setbacks, pedestrian and vehicular accessways, fencing, screening, landscaping, and minimum greenspace requirements. Further, no parking space on a lot in any district may be closer than five feet to a lot line, except in driveways provided that the driveway conforms to the requirements of chapter 58, article V.

Sec. 82-554 of the City of Berlin Code of Ordinances shall be amended as follows:

**Sec. 82-554. - Residential use restrictions.**

Accessory uses or structures in residential districts within the city shall not involve the conduct of any business, trade or industry, except for home occupations as defined in section 82-4 or as otherwise expressly allowed as a permitted or conditional use. Accessory buildings shall not be used for residential purposes.

Sec. 82-682 of the City of Berlin Code of Ordinances shall be amended as follows:

**Sec. 82-682. - Off-street parking**

- (f) *Number of stalls.* The number of parking stalls required shall be as shown in the following table:

Use	Minimum Parking Required
Single-family dwellings	1 stall for dwelling unit
Duplex and multifamily dwellings	1.5 stalls for each dwelling unit
Housing for the elderly	0.75 stall for each dwelling unit with one-half of such spaces to be built before occupancy and the balance of such spaces shall be reserved until such



	time as the city may order them to be installed
Hotels, motels	1 stall for each guest room, plus 1 stall for each 2 employees
Sororities, dormitories, roominghouses and boardinghouses	1 stall for each 2 sleeping rooms, plus 1 stall for each 2 employees
Retirement homes, orphanages, convents and monasteries	1 stall for each 2,000 feet of principal floor area
Hospitals, sanitariums, institutions, rest homes and nursing homes	1 stall for each 3 beds, plus 1 stall for each 3 employees
Medical and dental clinics	5 stalls for each doctor or dentist
Theaters, auditoriums, community centers, sports arenas and other places of public assembly	1 stall for each 5 seats or spaces equal to 20% of the capacity in persons, whichever is greater
Restaurants	1 stall for each 100 square feet of floor area, excluding the kitchen
Bars and places of entertainment	1 stall for each 75 square feet of floor area
Office buildings and professional offices having less than 6,000 square feet of floor area	1 stall for each 150 square feet of floor area
Office buildings and professional offices having 6,000 square feet or more of floor area, banks and savings institutions	1 stall, at least, for each 200 square feet of floor area
Drive-in establishments	1 stall, at least, for each 15 square feet of floor area in the building
Manufacturing and processing plants, including meat and food processing, laboratories and warehouses	1 stall for each 2 employees (the number of employees shall be construed to mean the maximum number on the premises at one time)
Libraries, museums, art galleries, etc.	1 stall for each 3 employees, plus 1 stall for each 4 seats, plus 1 stall for each 500 square feet of floor area not having seats
Washing and cleaning establishments	1 stall for each 2 employees, plus 1 stall for each washing machine, or 1 stall for each 200 square feet of floor area, whichever is greater
Funeral homes, mortuaries and similar uses	1 stall for each 50 square feet of floor area in parlors or assembly rooms
Retail stores	1 stall for each 200 square feet of floor area
Other business and commercial uses	1 stall for each 300 square feet of floor area
Churches and other places of religious assembly	1 stall for each 5 seats, or 1 stall for each 90 lineal inches of pew space
Cartage, express and parcel delivery, freight terminals	1 stall for each 2 employees on the largest shift for which the building is designed, plus 1 stall for each motor vehicle maintained on the premises
Elementary and junior high schools	2 stalls for each classroom, plus 1 stall for each 8 seats in the auditoriums or assembly halls
High schools, colleges, universities and other institutions of higher learning	1 stall for each 6 students, plus 1 stall for each teacher, administrator and employee
Business, technical and trade schools	1 stall for each 5 students, plus 1 stall for each 2 employees

Motor vehicle sales, new and used	1 stall for each 500 square feet of floor area used, plus 1 stall for each 300 square feet of outdoor display area for each motor vehicle to be displayed, not including service garages
Retail repair or service shops(nonautomotive)	1 stall for each 150 square feet of net floor space
Automobile repair garages and service stations	1 stall for each 2 employees, plus 2 stalls for each service bay
Bowling alleys	4 stalls for each alley, plus additional spaces for affiliate uses
Child day care facilities which do not meet the definition of a "family child care home" under Wis. Stat. § 66.1017	1 stall for each care worker required at the facility according to its state of Wisconsin licensing

**Comment [MC24]:** Please note that I changed this language since the last draft seen by the PC. I thought this made the most sense.

**Comment [LK25]:** I think we should include 1 stall for each 6 children similar to the elementary school as parents may need to park to drop off and pick up children as that was a concern with the proposed daycare.

Sec. 82-800 of the City of Berlin Code of Ordinances shall be amended as follows:

**Sec. 82-800 - Permitted signs rules.**

- (b) *Guide to Figure 82-800a*. If the letter "Y" appears for a sign type in a column, such sign is allowed without prior permit approval in the zoning districts represented by that column. If the letter "P" appears for a sign type in a column, such sign is allowed only with prior permit approval in the zoning districts represented by that column. If the letter "C" appears for a sign type in a column, such sign is allowed only with conditional use permit approval in the zoning districts represented by that column. Special conditions may apply in some cases. If the letter "N" appears for a sign type in a column, such a sign is not allowed in the zoning districts represented by that column under any circumstances.

- (3) *Key to Figure 82-800a and Figure 82-800b*. Figure 82-800a and Figure 82-800b, the headings have the following meanings:

Abbreviations Used in Figures 82-800a and 82-800b on the following page.	Zoning Districts or Uses
A	A-1 Agricultural District, <u>Chapter 82</u> , Article II, Division 4 and A-2 Farmland Preservation District, <u>Chapter 82</u> , Article II, Division 5
B	B-1 Business District, <u>Chapter 82</u> , Article II,

Abbreviations Used in Figures 82-800a and 82- 800b on the following page.	Zoning Districts or Uses
	Division 9 and B-2 Business District, <u>Chapter 82</u> , Article II, Division 10
C	C-1 Conservancy District, <u>Chapter 82</u> , Article II, Division 2 and C-2 Conservancy District, <u>Chapter</u> 82, Article II, Division 3
INS	Institutional Uses. "Institutional Uses" shall mean, but shall not be limited to, public parks and playgrounds, schools, <u>adult and child day care</u> <u>centers which do not meet the definition of a</u> <u>"family child care home" under Wis. Stat. § 66.1017</u> <u>even if such a facility would otherwise meet the</u> <u>definition of a home occupation</u> , churches, convents, libraries, hospitals, clinics, nursing homes, assisted living facilities, museums, and adaptive reuses of churches. For clarity, "Institutional Uses" shall <u>also</u> not mean single and two-family dwellings or bed and breakfast establishments.
M	M-1 Light Manufacturing District, <u>Chapter 82</u> , Article II, Division 11, M-2 Medium Manufacturing District, <u>Chapter 82</u> , Article II, Division 12, and M- 3 Heavy Manufacturing District, <u>Chapter 82</u> , Article II, Division 13
PUD	PUD Planned Unit Development District, <u>Chapter</u> 82, Article II, <u>Division 15</u>
R1-2	R-1 Residential District, <u>Chapter 82</u> , Article II, Division 6 and R-2 Residential District, <u>Chapter</u> 82, Article II, Division 7
R-3	R-3 Residential District, <u>Chapter 82</u> , Article II, Division 8
R-MH	R-MH Manufactured Home District, <u>Chapter 82</u> , Article II, <u>Division 14</u>

**Comment [LK26]:** This would allow signs  
up to 100 sq ft in residential neighborhood  
similar to our business districts. I believe this  
is too large. It would also allow electronic  
message board.

This ordinance shall take effect the day after publication.

The numeric section numbers and headings of any portions of the Code of Ordinances affected by this Ordinance shall be subject to modification in the discretion of the codifier, and the approval of the City Attorney, during codification into the City's current Code of Ordinances.

Passed, approved and adopted this \_\_\_\_ day of \_\_\_\_\_, 2020.

ROLL CALL VOTE:

CITY OF BERLIN

\_\_\_\_ AYES  
\_\_\_\_ NAYS  
\_\_\_\_ ABSENT

BY: \_\_\_\_\_  
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

ATTEST: \_\_\_\_\_  
Jodie Olson, City Clerk

\_\_\_\_\_  
Matthew G. Chier, City Attorney



By adding this exception, all day care facilities, including home occupations except for those that meet the definition of a "family child care home", will now require a conditional use permit, or be completely prohibited (if over the cap on number of kids per lot size) in residential districts. Existing home occupation day cares will be grandfathered under normal zoning grandfathering rules. Wis. Stat. § 66.1017 defines a "family child care home" as: "A dwelling licensed as a child care center by the department of children and families under s. 48.65 where care is provided for not more than 8 children. This statute expressly prohibits municipalities from preventing these types of homes or putting special standards on such homes different than state licensing requirements through zoning regulations, which is why we have to except these homes out from these new regulations.

Although I think everyone probably understands this already from our recent discussions about conditional use permits, I wanted to be sure that everyone is aware that Sec. 82-641(a) already sets forth a number of general factors that will apply to the issuance of a CUP for a day care center. That code section reads as follows:

The board of appeals shall consider, among other things, the particular facts and circumstances of each proposed use in terms of the following standards, and shall find substantial evidence that such use on the proposed location will:

- (1) Be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the area.
- (2) Not be hazardous or disturbing to existing or future neighboring uses.
- (3) Not be detrimental to property in the immediate vicinity or to the community as a whole.
- (4) Be adequately served by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to adequately provide any such service.
- (5) Have vehicular approaches to the property which shall be designed not to create interference with traffic on surrounding public streets, alleys, roads or sidewalks.
- (6) Not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
- (7) Not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (8) Not violate state or federal floodplain or wetland areas.

This 5am to 10pm time limit is crafted to be the opposite of a "night care facility" as defined by the state, which is 10pm to 5am.

Also, on a side note, I want everyone to be aware that Sec. 82-553 already prohibits any accessory structure, including play structures, in front yards, except for corner lots having rear yards of 20 feet or less. I was going to add similar such restrictions in this new ordinance specially for day care centers, but realized that it wasn't necessary because it was already prohibited.

Also, at the 7/28/20 PC meeting, the PC requested I add a condition which requires the consideration of an off street drop-off requirement depending on traffic safety in the area of the subject lot. The idea was that for lots that are on busy streets, the PC can require an off street drop off, but on non-busy streets an on-street drop off may be OK. However, after looking again at Sec. 82-641(a)(5) of the code, I think the board of appeals is already required to consider this type of restriction. Sec. 82-641(a)(5) reads as follows:

The board of appeals shall consider, among other things, the particular facts and circumstances of each proposed use in terms of the following standards, and shall find substantial evidence that such use on the proposed location will:

...

(5) Have vehicular approaches to the property which shall be designed not to create interference with traffic on surrounding public streets, alleys, roads or sidewalks.

With that language, I don't think anything additional needs to be added here, unless the PC disagrees and wants something more specific added.