

AGENDA FOR THE PLAN COMMISSION

Members noticed must notify the person who prepared agenda (see below) at least 24 hours before the meeting as to whether they will not be able to attend this meeting.

Date and Time: Tuesday, August 21, 2018, **5:15 PM**
Location: Council Chambers, Municipal Building, 101 South Blvd., Baraboo, Wisconsin
Plan Comm Notices: Mayor Palm, P. Wedekind, D. Thurow, R. Franzen, P. Liston, J. O'Neill, T. Kolb, K. Fitzwilliams
Others Noticed: T. Pinion, E. Geick, E. Truman, Gary Wegner, Bruce Braithwaite, Bekah Hargraves, Scott Hewitt, Library, and Media.

PETITIONERS OR REPRESENTATIVES MUST BE PRESENT OR SUBJECT WILL NOT BE HEARD BY THE COMMISSION!

1. Call to Order

- a. Note compliance with the Open Meeting Law.
- b. Approve agenda.
- c. Approve July 31, 2018 meeting minutes.

2. Public Invited to Speak (Any citizen has the right to speak on any item of business that is on the agenda for Commission action if recognized by the presiding officer.)

3. New Business

- a. Consideration of a request to rezone the 5.3-acre parcel on the north side of South Blvd in the SE ¼ of the NW ¼ of Section 3, T11N, R6E, located at 1420 South Blvd and formerly occupied by the Honey Boy Mobile Home Park, from MH-P, Mobile Home Park to a B-3, Highway Oriented Business zoning classification by Bruce Braithwaite.
- b. Consideration of a request to rezone the 2-acre parcel on the west side of Vine Street in the NE ¼ of the SE ¼ of Section 2, T11N, R6E, located at 729 Vine, from R-1A Single Family Residential to NRO Neighborhood Residential Office classification by Rabeka Hargraves and Jordan Darrow to allow the operation of a beauty shop in the existing single-family residence.
- c. Review a one lot Certified Survey Map for a fractional part of the NW ¼ of the NE ¼ and a fractional part of the NE ¼ of the NW ¼ of 2, T11N, R6E, City of Baraboo, Sauk County, Wisconsin located at 324 Lynn Avenue for Jacob Kufner.
- d. Discussion and possible recommendation to eliminate certain Conditional Uses in the Zoning Code.

4. Adjournment

Phil Wedekind, Mayor Designee
Agenda prepared by Kris Jackson, 355-2730, Ext. 309
Agenda Posted by Kris Jackson on August 17, 2018

PLEASE TAKE NOTICE, that any person who has a qualifying as defined by the Americans with Disabilities Act that requires the meeting or materials at the meeting to be in an accessible location or format, should contact the Municipal Clerk, 101 south Blvd., or phone 355-2700, during regular business hours at least 48 hours before the meeting so that reasonable arrangements can be made to accommodate each request.

It is possible that members of, and possibly a quorum of members of, other governmental bodies of the City of Baraboo who are not members of the above Council, committee, commission or board may be in attendance at the above stated meeting to gather information. However, no formal action will be taken by any governmental body at the above stated meeting, **other than the Council, committee, commission, or board identified in the caption of this notice.**

FOR INFORMATION ONLY, NOT A NOTICE TO PUBLISH.

Minutes of Plan Commission Meeting July 31, 2018

Call to Order – Phil Wedekind called the meeting of the Commission to order at 5:15 PM.

Roll Call – Present were Phil Wedekind, Dennis Thurow, Pat Liston, Jim O’Neill, Tom Kolb, and Kate Fitzwilliams. Roy Franzen was absent.

Also in attendance were Mayor Palm, Administrator Geick, Tom Pinion, Attorney Truman, Anita LaCoursiere, Gary Wegner, Andy Eberhardt, Travis Gehrke, Michael Carbonara, and Ben Bromley.

Call to Order

- a. Note compliance with the Open Meeting Law. Wedekind noted compliance with the Open Meeting Law.
- b. Agenda Approval: It was moved by O’Neill, seconded by Kolb to approve the agenda as posted. Motion carried unanimously.
- c. Minutes Approval: It was moved by Kolb, seconded by O’Neill to approve the minutes of the July 17, 2018 meeting. Motion carried unanimously.

Public Invited to Speak (*Any citizen has the right to speak on any item of business that is on the agenda for Commission action if recognized by the presiding officer.*) – There were no speakers.

New Business

- a. Consideration of Wisconsin Power & Light’s (Owner) and American Transmission Company’s (Applicant) request for a Conditional Use Permit to allow the expansion of the existing substation and the construction of a new self-contained control house in a B-1 Central Business zoning district, located at their Lynn Street substation on the south side of the Baraboo River between Vine and Walnut Streets, 125 Vine Street, City of Baraboo – Andy Eberhardt, representative of ATC addressed the Commission regarding their request. He said that he understands that the Commission has the desire to aesthetically improve the site of the facility. He then presented the Commission with a plan showing a mesh that blocks approximately 89% of the view from those looking in from the outside. He said that ATC would be willing to installing if acceptable to the Commission. Discussion took place regarding grade of mesh and various colors. Liston moved to approve the conditional use permit conditioned upon installing forest green screening on the south and east sides of the fenced enclosure. Kolb seconded the motion. On roll call vote for the motion, Ayes – Thurow, Liston, O’Neill, Kolb, Fitzwilliams, and Wedekind. Nay – 0, motion carried 6-0.
- b. Consideration of a Request from Bruce Braithwaite to rezone the 5.3-acre parcel on the north side of South Blvd. in the SE¼ of the NW¼ of Section 3, T11N, R6E, located at 1420 South Blvd. and formerly occupied by the Honey Boy Mobile Home Park, from MH-P, Mobile Home Park to a B-3, Highway Oriented Business zoning classification by Bruce Braithwaite – Pinion introduced Gary Wegner, agent for Bruce Braithwaite, who lives in Missouri. Pinion said that the property is currently zoned MH-P, manufactured Home Park. The property owners are requesting the property to be rezoned to B-3, which is the property that surrounds the east and north side of it, and west of the property is zoned I-4. Wedekind asked if there were still trailers on the property. Wegner said anything of value has been sold and will be removed, and the remaining will most likely be razed. Liston asked the timeframe. Wegner said that a 14-day notice was given to everyone that still has sheds, etc. on the property. Wegner said he is unsure if the 14 days is up, but the owners want to clean it up as quickly as possible after they can do so. Pinion said that he has had contact with Vicky Harding, former manager, and she indicated that the final date was today, July 31 for residents to clean their property. The owner has a couple that he has sold and is waiting for replacement titles. Liston said that he feels that it makes sense for the property to be zoned B-3; however, he does have a problem rezoning it before all the trailers are gone. He said as he understands it, the applications that was made did not specify what the use of those structures would be; therefore, the application was incomplete. Liston moved to postpone this request for 60 days to give the owners the opportunity to move the structures. Kolb as Attorney Truman if it is possible to approve the request conditionally. Truman recommended not doing this because it could cause a lot of problems and difficulties, should they fail to meet that condition. Truman said that the proposed motion on the table to postpone it would probably make more sense, and make things easier in case there were problems down the line. Pinion said that the Plan Commission when it comes to rezoning matters is in advisory body, so if the Commission chooses to postpone, the owner comes back in 60 days, or the Commission can send it to

Council to approve or deny, and suggest that they not entertain it until it is a vacant site. O'Neill seconded the motion to postpone. Wegner said that he does not feel that is a problem, because they have not had anyone that has said that they are willing to purchase it if it is zoned correctly. He said that it is interesting now since they evicted, the number of calls he has received from manufactured home people saying not to give up the zoning because it would never be given back and they wanted to look at it. He went on to say that, they have been trying to sell this property for three years as a manufactured home park, with the idea that somebody, some day would redevelop it into something else. He said that there was a fair amount of interest, except everyone said that you could not get \$795,000 out of a 35-home mobile home park, especially due to the condition. Liston amended the motion saying that if the property was cleaned up before 60 days the request can be brought back to the Commission. O'Neill seconded the amended motion. On roll call vote for the motion, Ayes – Liston, O'Neill, Kolb, Fitzwilliams, Wedekind, and Thurow. Nay – 0, motion carried 6-0.

- c. Discussion of Wisconsin Act 67 and its effect on local zoning authority – Pinion presented the background on this subject. He said that one of the avenues that the Commission may want to consider is the I-4 district, for example includes in excess of 100 permitted uses, and probably 50 conditional uses, and then a list of prohibited uses. He said that in the definitions of the zoning code, home occupation says these types of businesses or allowed, but it cannot be one of the following, then there is a list of prohibited uses. Therefore, if they Commission followed that theme, the Commission could say in the conditional use overlay district, and generate a list of prohibited uses. He said the Mayor is looking at an AdHoc Committee to rewrite the entire Chapter 17; however, if the Commission is looking for more of an intermediate step to try and eliminate some of the less than desirable uses that the Commission may consider, it may be an avenue to do that. Pinion presented the Commission with a draft of a proposed provision to the zoning code under the conditional use overlay district with a list of prohibited uses. Kolb asked if this would preclude the zoning districts in an overlay. Attorney Truman said that if a zoning were within the conditional use overlay district, then yes, this would be perfect regardless of what the zoning is within this area.

Adjournment - It was moved by Liston, seconded by Kolb to adjourn at 6:01 p.m. The motion carried unanimously.

Phil Wedekind, Mayor Designee

**PLAN COMMISSION ITEM SUMMARY
AUGUST 21, 2018**

SUBJECT: CONSIDERATION OF A REQUEST FROM BRUCE BRAITHWAITE TO REZONE THE 5.3-ACRE PARCEL ON THE NORTH SIDE OF SOUTH BLVD IN THE SE ¼ OF THE NW ¼ OF SECTION 3, T11N, R6E, LOCATED AT 1420 SOUTH BLVD AND FORMERLY OCCUPIED BY THE HONEY BOY MOBILE HOME PARK, FROM MH-P, MOBILE HOME PARK TO A B-3, HIGHWAY ORIENTED BUSINESS ZONING CLASSIFICATION BY BRUCE BRAITHWAITE.

SUMMARY OF ITEM A: The item was on July 31st agenda but there was a concern about the absence of a plan and schedule for removing the existing manufactured homes from the site so the matter was postponed. The owners of the former Honey Boy Mobile Home Park at 1420 South Blvd have closed the park and have listed the property for sale. They are requesting the underlying property be rezoned to a B-3 Highway Oriented Business district, which is the same zoning classification as the surrounding property. The requested zoning is consistent with the City future land use plan, which is a part of the City's Comprehensive Plan.

Although there are still manufactured homes remaining on the site, several have been removed in the last few weeks and the contractor has been hired to continue with the demolition of these homes until they are all gone. The "abandoned" homes had become an attractive nuisance and the City was prepared to commence abatement proceedings to have the homes removed at the property owner's expense. It is staff's position that the property is far better suited for a commercial use than its former use as a manufactured home park. In the absence of this request to rezone, the City was prepared to commence a rezoning of the property.

If there is still concern that fate of the remaining homes is uncertain, a recommendation to rezone could include a provision that the effective date of any rezoning ordinance be delayed until the property is vacant.

ACTION: Forward to Common Council for a Public Hearing on the Re-Zoning with a recommendation to Approve/Conditionally Approve/or Deny the Proposed Re-Zoning to a B-3 Highway-Oriented Business zoning classification.

SUBJECT: CONSIDERATION OF A REQUEST TO REZONE THE 2-ACRE PARCEL ON THE WEST SIDE OF VINE STREET IN THE NE ¼ OF THE SE ¼ OF SECTION 2, T11N, R6E, LOCATED AT 729 VINE, FROM R-1A SINGLE FAMILY RESIDENTIAL TO NRO NEIGHBORHOOD RESIDENTIAL OFFICE CLASSIFICATION BY RABEKA HARGRAVES AND JORDAN DARROW TO ALLOW THE OPERATION OF A BEAUTY SHOP IN THE EXISTING SINGLE-FAMILY RESIDENCE.

SUMMARY OF ITEM B: The new owners of this property on Vine Street would like to establish a beauty shop on the lower level of the existing residence. In the existing single-family residential districts, beauty shops are specifically prohibited as a home occupation as well as a professional home office. The Zoning Code contains the following definition:

PERSONAL OR PROFESSIONAL SERVICES. Personal service and professional service land uses include all exclusively indoor land uses whose primary function is the provision of services directly to an individual on a walk-in or on-appointment bases. Examples of such uses include professional services, insurance or financial services, realty offices, medical offices, or clinics, veterinary clinics, **barber shops, beauty shops**, and related land uses.

The NRO-Neighborhood Residential/Office zoning district allows Personal or Professional Services as a Conditional Use. Accordingly, the property owners are seeking rezoning to an NRO zoning classification so they can apply for a Conditional Use Permit.

ACTION: Forward to Common Council for a Public Hearing on the Re-Zoning with a recommendation to Approve/Conditionally Approve/or Deny the Proposed Re-Zoning to an NRO Neighborhood Residential/Office zoning classification.

SUBJECT: REVIEW A ONE LOT CERTIFIED SURVEY MAP FOR A FRACTIONAL PART OF THE NW¼ OF THE NE¼ AND A FRACTIONAL PART OF THE NE¼ OF THE NW¼ OF 2, T11N, R6E, CITY OF BARABOO, SAUK COUNTY, WISCONSIN LOCATED AT 324 LYNN AVENUE FOR JACOB KUFNER.

SUMMARY OF ITEM C: Jacob Kufner owns two adjacent parcels with a combined width of 50 feet and he would like to combine them by way of this CSM.

COMPLIANCE/NONCOMPLIANCE:

Pursuant to Section 18.06 – *Certified Survey Map*, I have found the CSM to be complete and have reviewed it for compliance with the ordinance.

ACTION: Approve/Conditionally Approve / Deny the CSM.

SUBJECT: DISCUSSION AND POSSIBLE RECOMMENDATION TO ELIMINATE CERTAIN CONDITIONAL USES IN THE ZONING CODE.

SUMMARY OF ITEM D: At our last meeting, we discuss the Legislature’s recently approved ACT 67 and how that has changed the way a municipality can regulate private property, including the use of CUP regulations.¹ State statute now requires that a municipality issue a CUP whenever an applicant “meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board.”²

The law also requires:

- That any requirements or conditions imposed “be related to the purpose of the ordinance and be based on substantial evidence,” where “substantial evidence” means “facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion,” and
- That any requirements or conditions be “reasonable and, to the extent practicable, measurable.”³

For example, the City’s stated purpose of the B-3 Zoning District, where the Property is located, is “to provide for sewer commercial activities oriented toward regional markets requiring highway exposure to the highway user or intended to service vehicles.”⁴ The Property is also located in the City’s Conditional Use Overlay district, meaning any and all uses of the Property requires a CUP. The intent is to ensure the City has control over any “undesirable impacts on nearby properties, the environment, [or] the community as a whole” and “to promote the public health, safety, and general welfare of the community.”^{5,6} The City’s Code does not specify any requirements or conditions that must be met or agreed to by the applicant for the Property prior to the issuance of the amended CUP. Therefore, any requirements or conditions mandated by the City prior to the issuance of the amended CUP must be independently analyzed within the context of the updated state statute, and must be: related to the purpose of the ordinance, based on substantial evidence, reasonable and, if possible, measurable. One condition that would meet the new standard would be to require there are no code or statute violations occurring on or at the Property relating to the sale of used vehicles for the duration of the CUP.

¹ For a discussion of the changes to the law, see the LWM article included in the packet.

² §62.23(7)(de)2.a, Wis. Stat. 28

³ Id.

⁴ §17.29, City Code.

⁵ §17.37(1)(c), City Code.

⁶ §17.37(5)(a), City Code

Although the City is looking at updating the entirety of our current Zoning Code, given the circumstances, the Commission may want to consider eliminating certain uses listed as Conditional Uses in our Zoning Code, and in particular, in the 11 zoning districts included in the Conditional Use Overlay District during the interim. Included in the packet is a summary of those Conditional Uses as well as a map showing the Overlay District’s boundary.

If the Commission decides certain uses should be eliminated, the process parallels that of a rezone since it requires an amendment to our Zoning Code.

ACTION: Forward to Common Council for a Public Hearing to amend the Zoning Code with a recommendation to Approve/Conditionally Approve/or Deny the proposed amendment.

Pinion, Tom

From: Bruce Braithwaite <bruce@drbuz.com>
Sent: Tuesday, July 10, 2018 8:35 PM
To: Pinion, Tom
Cc: Dale Vicky Harding; 'Gary Wegner'; Bryan Braithwaite
Subject: Honey Boy mobile home park

Tom,

Thanks for the suggestion.

Yes we would like to rezone the property to a B-3, Highway Oriented Business classification. Let this please be my official request to do so.

I will have Dale or Vicky Harding, the park managers drop off a check to you this week.

Thanks again for your kind assistance.

Bruce Braithwaite, owner

From: Gary Wegner <WegnerG@firstweber.com>
Sent: Tuesday, July 10, 2018 4:00 PM
To: Bruce Braithwaite
Subject: Re: Honey Boy mobile home park

I would suggest that you seek the rezoning to B-3, Highway Oriented Business. You would never get your manufactured housing zoning back however I do not feel that is the highest and best use of your property. So unless you are hesitant to give that up, I would proceed with the more standard and practical B-3 zoning.

Gary Wegner
First Weber - Wisconsin Dells
A Berkshire Hathaway affiliate
608-963-9915
<http://www.garywegner.firstweber.com/>



From: Bruce Braithwaite <bruce@drbuz.com>
Sent: Tuesday, July 10, 2018 2:05 PM
To: Gary Wegner
Subject: Re: Honey Boy mobile home park

For Office Use:	Date		Date
<input type="checkbox"/> Application given by _____	_____	<input type="checkbox"/> Notices Mailed by _____	_____
<input type="checkbox"/> Fee received by Treasurer _____	_____	<input type="checkbox"/> Public Hearing Published by _____	_____
<input type="checkbox"/> Filed with City Clerk _____	_____	<input type="checkbox"/> Plan Commission Held _____	_____
<input type="checkbox"/> Zoning Administrator Certification _____	_____	<input type="checkbox"/> Public Hearing Held _____	_____
<input type="checkbox"/> Referred for Staff Review _____	_____	<input type="checkbox"/> Council Action _____	_____
<input type="checkbox"/> Public Hearing Set _____	_____		

City of Baraboo
 101 South Blvd.
 Baraboo, WI 53913
 (608) 355-2730 phone
 (608) 355-2719 fax

PETITION FOR ZONING CHANGE

(A non-refundable \$250 fee must accompany this application upon filing.)

FOR TREASURER USE
Receipt # _____
Account # 100-22-4440

Date of Petition: 8/10/18

The undersigned, being all the owners of the real property covered by this zoning change request, hereby petition the City of Baraboo Plan Commission and Common Council as follows:

- Name and address of each owner: Rabekah Hargraves and Jordan Darrow
729 Vine St. Baraboo, WI 53913
- Address of site: 729 Vine St. Baraboo, WI 53913
- Tax parcel number of site: 206-1096-00000
- Accurate legal description of site (state lot, block, and recorded subdivision or metes and bounds description) (Attach copy of owner's deed): 2.06 acre Int with single family residence.
- Present zoning classification: R-1A
- Requested zoning change: NRO
- Brief description of structures presently existing on site (include photos): Just single family residence, no other structures.
- Brief description of present use of site and structures thereon: Just single family residence, no other structures.
- Brief description of any proposed change in use or structures if request for zoning change is granted (include change in number of employees): No structure changes. Basement of residence was previously a Sealcoat Business Shop, want to open single owner, no employees Beauty shop in same basement. No structure changes or additions needed.
- The following arrangements have been made for serving the site with municipal sewer and water: same water and sewer as residence. no change.

11. Name, address, and tax parcel number of all owners of each parcel immediately adjacent to the boundaries of the site and extending 200 feet from and all the owners of the land directly opposite from the site extending 200 feet from the street frontage of such opposite land. (see section 17.11(1)(c) and City Code).
12. A scale map or survey showing the location, boundaries, dimensions, uses, and size of the site and its relationship to adjoining lands is attached. The map or survey shows the approximate location of existing structures, easements, streets, alleys, loading areas and driveways, off street parking, highway access and access restrictions, existing street, side and rear yards, surface water drainage, grade elevations and the location and use of any lands immediately adjacent to each of the boundaries of the site and extending 200 feet, plus the location of any existing structures on each such identified parcel. The name and address of each owner is attached.
13. A statement with supporting evidence indicating that the proposed zoning change or special zoning exception shall conform to the purpose, intent, spirit and regulations of the Zoning Code.

WHEREFORE, the undersigned property owners hereby state that the foregoing information and all attachments to this Petition are true and correct to the best of our knowledge.

Dated this 10th day of August, 2018.

Property Owner

Judith Dancer
Property Owner

Property Owner

Rebecca Hargreaves
Property Owner

<p>I have reviewed this application for completeness:</p> <p>Date: _____</p> <p>Zoning Administrator: _____</p>

My name is Rabekah Hargraves and my fiancé, Jordan Darrow and I have both been Baraboo natives for each of our 26 years of life. We love this community and everything it has to offer while raising our family. I graduated Cosmetology School in 2012 and later that year opened my first business with a partner in Wisconsin Dells, named Bella Vita Salon, LLC. I co-owned and managed this salon for 4+ years and eventually decided the commute was too much. In March of 2017, I relocated and opened my own salon space within Salon Ice, LLC, in Baraboo and have been there ever since.

My Fiancé and I recently purchased our Forever Home from my relatives at 729 Vine Street, Baraboo. We plan to raise our children here and stay in the area. Having two infant daughters, we realized it would be beneficial to our family for me to be able to stay at home and raise our children, but still be able to follow my passion of Cosmetology.

Our home is a single-family residence, previously owned by my grandparents since 1981. My grandfather and uncles owned a Seal Coating Business and ran their shop/office out of the bottom of the home for many years. The lower level of our home at this location, is still currently setup for that business. There is no need to build or add any new structures on the property. This also means there will be no need for new water and/or sewer hookups. The space has a separate entrance, two if you count the large garage door that is close by as well. This area also has its own off-street parking, completely separate from our own personal driveway.

(PHOTOS ATTACHED)

The other end of Vine Street, closer to the Baraboo River, is currently zoned Commercial, as well as, less than a block away from our home, on the opposite side of the street is a commercially zoned Church.

I am solely the only employee of my business and I don't foresee that changing. This means there should be no change in amount of vehicle traffic or foot traffic in our neighborhood in the idea of me running my business on our property. The off-street parking that we currently have would also aid in this factor of keeping traffic low and to a minimum.

With previously owning a Beauty Salon myself and currently running and managing one as well still, I do have a current Federal Tax I.D. Number and all state required licenses to perform Cosmetology and run my business solely by myself. The lower level meets all the requirements needed to be approved for a new Cosmetology Establishment, so for the salon end of things, it would only take a Change of Address and a New Site Plan to transfer my business licenses to the new location. That leaves the City of Baraboo Zoning of our residence being the only detail in the way of me opening my own in-home Salon on our property.

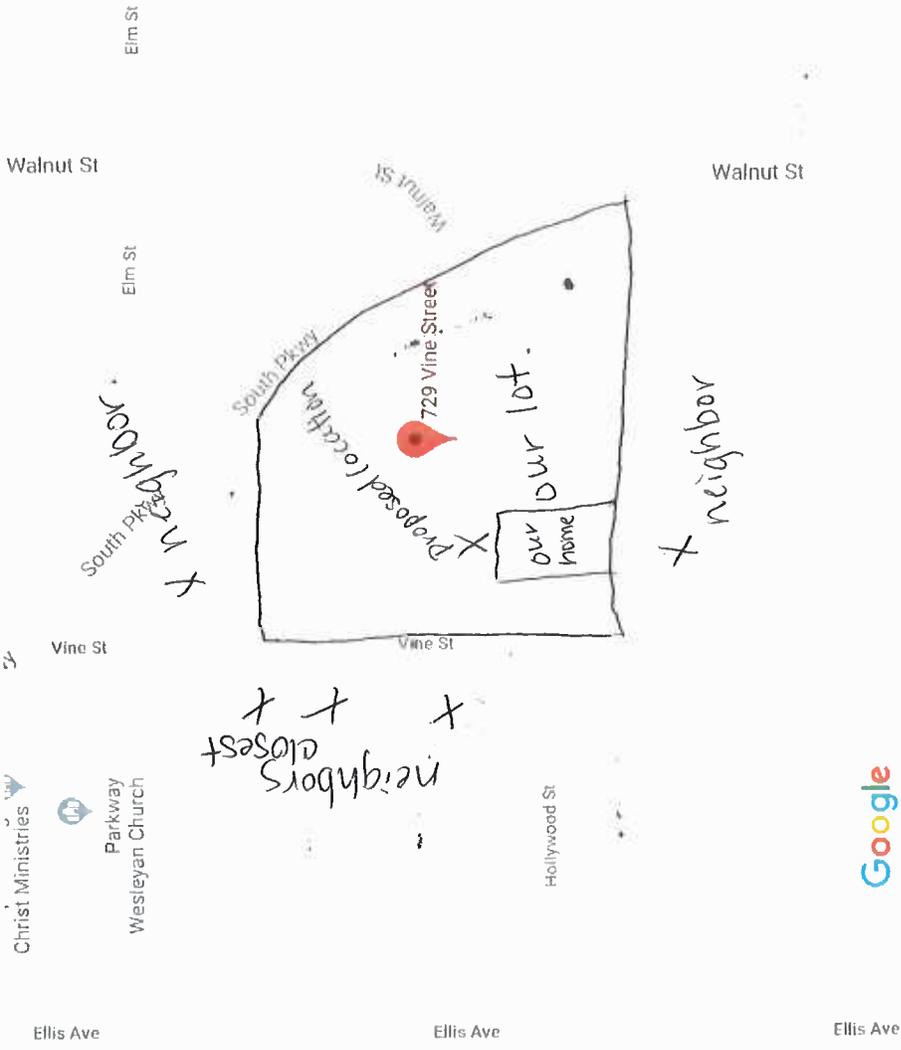
I hope you can take all things listed above into great consideration, along with my application, and grant my wish of rezoning our property, in hopes of being able to raise my children, quietly working from home, and stay a Baraboo local forever with my family! Thank you for your time and consideration.

Google Maps 729 Vine St



Imagery ©2018 Google, Map data ©2018 Google 100 ft

Google Maps 729 Vine St



Map data ©2018 Google 100 ft



Neighbors within 200 ft of proposed business site:

- Charles Ganser

700 Vine St.

Baraboo, WI

53913

- Dan and Mary Gander

724 Vine Street

Baraboo, WI

53913

- Tom Pinion said he can get/has each of those neighbors tax parcel numbers.

As prepared by:

G GROTHMAN & ASSOCIATES S.C.
LAND SURVEYORS
 625 EAST SUPER STREET, P.O. BOX 373 PORTAGE, WI. 53901
 PHONE: PORTAGE: (808) 742-7769 SAUK: (808) 844-8577
 FAX: (808) 742-0434 E-MAIL: surveying@grothman.com
 (RED LOGO REPRESENTS THE ORIGINAL MAP)

SEAL:



G & A FILE NO. 618-380

DRAFTED BY: LD

CHECKED BY: TG

PROJ. 618-380

DWG. 618-380 SHEET 1 OF 2

SAUK COUNTY COUNTY CERTIFIED SURVEY MAP NO. _____
GENERAL LOCATION

Volume _____, Page _____

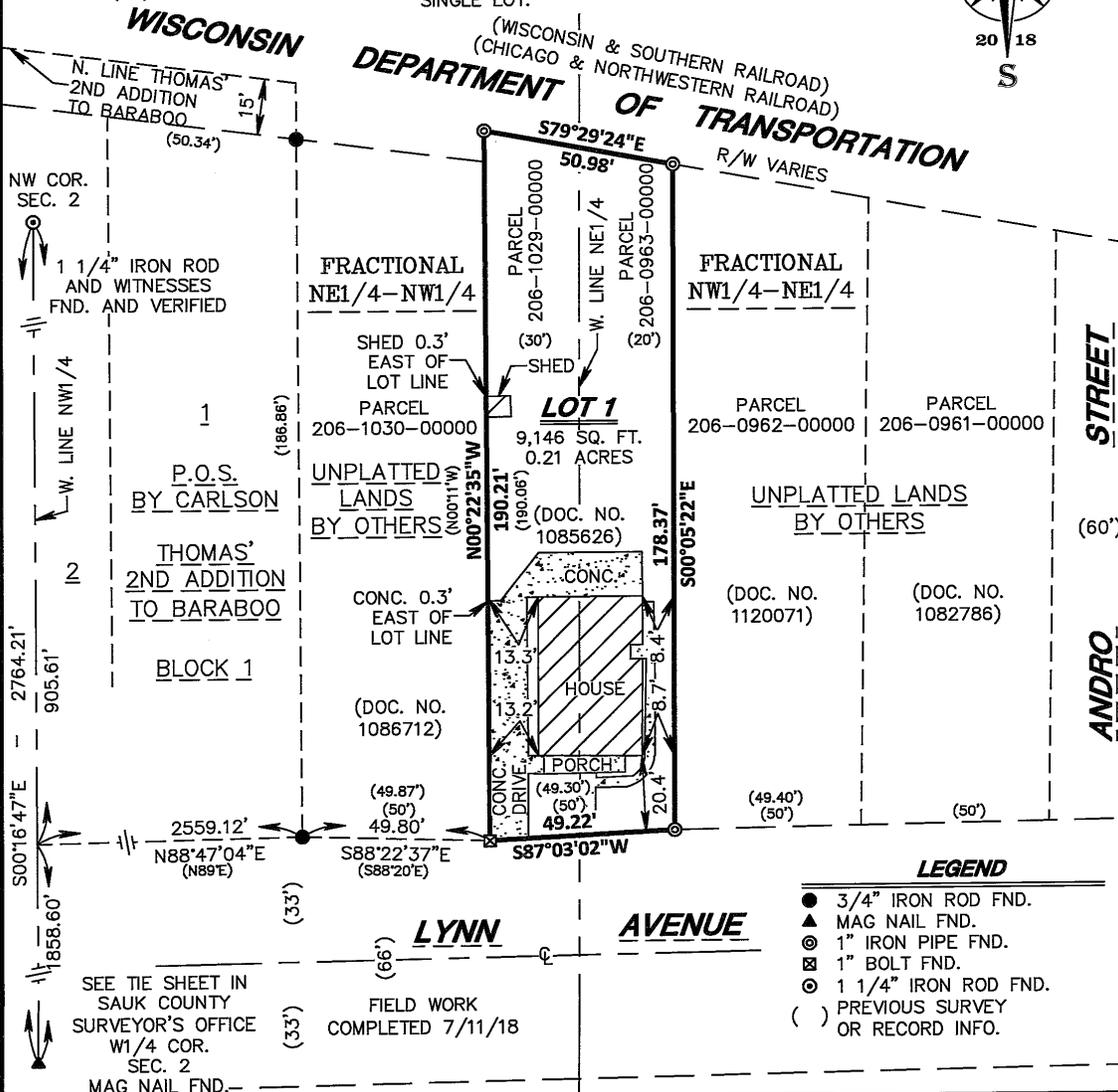
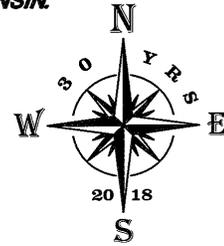
BEING PART OF THE FRACTIONAL NW1/4 OF THE NE1/4 AND THE FRACTIONAL NE1/4 OF THE NW1/4, SECTION 2, T. 11 N, R. 6 E, CITY OF BARABOO, SAUK COUNTY, WISCONSIN.

BASIS OF BEARINGS: IS THE WEST LINE OF THE NW1/4 SECTION 2 WHICH BEARS S00°16'47"E AS REFERENCED TO GRID NORTH, SAUK COUNTY COORDINATE SYSTEM NAD83(97).

SCALE: 1" = 40'



NOTE: THE PURPOSE OF THIS SURVEY IS TO COMBINE 2 INDIVIDUAL PARCELS INTO A SINGLE LOT.



LEGEND

- 3/4" IRON ROD FND.
- ▲ MAG NAIL FND.
- ⊙ 1" IRON PIPE FND.
- ⊗ 1" BOLT FND.
- ⊕ 1 1/4" IRON ROD FND.
- () PREVIOUS SURVEY OR RECORD INFO.

OWNER/CLIENT: JACOB J. KUFNER
 324 LYNN AVENUE
 BARABOO, WI, 53913

As prepared by:

GA GROTHMAN & ASSOCIATES S.C.
LAND SURVEYORS
 625 EAST SUPER STREET, P.O. BOX 373 PORTAGE, WI. 53901
 PHONE: PORTAGE: (808) 742-7788 SAUK: (808) 844-8877
 FAX: (808) 742-0434 E-MAIL: surveying@grothman.com
 (RED LOGO REPRESENTS THE ORIGINAL MAP)

G & A FILE NO. 618-380

DRAFTED BY: LD

CHECKED BY: TG

PROJ. 618-380

DWG. 618-380 SHEET 2 OF 2



SAUK COUNTY COUNTY CERTIFIED SURVEY MAP NO. _____
GENERAL LOCATION Volume _____, Page _____
BEING PART OF THE FRACTIONAL NW1/4 OF THE NE1/4 AND THE FRACTIONAL NE1/4 OF THE NW1/4, SECTION 2, T. 11 N., R. 6 E., CITY OF BARABOO, SAUK COUNTY, WISCONSIN.

SURVEYOR'S CERTIFICATE

I, **SCOTT P. HEWITT**, Professional Land Surveyor, do hereby certify that by the order of **Jacob J. Kufner**, I have surveyed, monumented and mapped part of the fractional Northwest Quarter of the Northeast Quarter and the fractional Northeast Quarter of the Northwest Quarter of Section 2, Town 11 North, Range 6 East, City of Baraboo, Sauk County, Wisconsin described as follows:

Commencing at the Northwest corner of Section 2;
 thence South 00°16'47" East along the West line of the Northwest Quarter of Section 2, 905.61 feet;
 thence North 88°47'04" East, 2,559.12 feet to the Southeast corner of Lot 1, Block 1, Thomas' 2nd Addition to Baraboo, said point being in the North right-of-way line of Lynn Avenue;
 thence South 88°22'37" East along the North right-of-way line of Lynn Avenue, 49.80 feet to the Southwest corner of lands described and recorded in Document No. 1085626 and the point of beginning;
 thence North 00°22'35" West along the West line of lands described and recorded in Document No. 1085626, 190.21 feet to the Northwest corner thereof said point being in the South line of lands owned by the Wisconsin Department of Transportation;
 thence South 79°29'24" East along the North line of lands described and recorded in Document No. 1085626 also being the South line of lands owned by the Wisconsin Department of Transportation, 50.98 feet to the Northeast corner thereof;
 thence South 00°05'22" East along the East line of lands described and recorded in Document No. 1085626, 178.37 feet to the Southeast corner thereof said point being in the North right-of-way line of Lynn Avenue;
 thence South 87°03'02" West along the South line of lands described and recorded in Document No. 1085626 and the North right-of-way line of Lynn Avenue, 49.22 feet to the point of beginning.
 Containing 9,146 square feet (0.21 acres), more or less. Being subject to servitudes and easements of record, if any.

I DO FURTHER CERTIFY that this is a true and correct representation of the boundaries of the land surveyed and that I fully complied with the Provisions of AE7 Wisconsin Administrative Code, Chapter 236.34 of the Wisconsin State Statutes and the City of Baraboo Subdivision Ordinance to the best of my knowledge and belief.

Scott P. Hewitt

SCOTT P. HEWITT
 Professional Land Surveyor, No. 2229
 Dated: August 3, 2018
 File No.: 618-380

PLAN COMMISSION RESOLUTION

RESOLVED that this Certified Survey Map in the **City of Baraboo**, Sauk County, Wisconsin is hereby approved by the Plan Commission.

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Mayor	Date
_____	_____
City Engineer	Date

I HEREBY certify that the foregoing is a copy of a Resolution adopted by the Plan Commission of the **City of Baraboo**, Wisconsin, this _____ day of _____, 20_____.

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Legislature Curtails Municipal Conditional Use Permit Authority

Daniel M. Olson, Assistant Legal Counsel, League of Wisconsin Municipalities

The Wisconsin legislature enacted major changes to local zoning authority laws in 2017 that were urged and promoted by developers but described by its legislative supporters as a “homeowners” bill of rights. Nonetheless, the laws passed and the governor signed them. Significantly, the most important change to municipal land use powers included in the legislation, 2017 Wisconsin Act 67, impacts the conditional use permit (“CUP”) authority of all local governments, including cities and villages.

Conditional Use Background

Zoning is a regulatory system designed to proactively improve the quality of land use patterns in communities and supplant the inefficient, expensive, and reactive nuisance litigation morass of the 19th century. These goals are typically accomplished by grouping compatible land use activities into zoning districts, which diminishes the negative impacts from incompatible uses.

Within the districts, certain land uses are deemed unlikely to adversely affect other uses in the district and are permitted without review. Other land use activities are only allowed as conditional uses in zoning districts even though they may be beneficial because they carry a high risk of negative external impacts on adjoining properties, neighborhoods or the whole community. These less compatible and less desirable land uses are commonly allowed only after individualized review by a zoning authority and subject to conditions designed to decrease the potential adverse impacts.

The traditional CUP system of the last 75-plus years provided cities and villages

with critical flexibility to accommodate risky land uses but protect the property values and investments of adjoining property owners, neighborhoods, and the whole community. The legislative changes to city and village CUP authority attacks that balance of interests by making the CUP decision process rigid and less able to protect other property owners and communities from the negative impacts of land uses traditionally categorized as conditional uses. A CUP system is now a much less desirable land use planning and regulation tool that cities and villages might reasonably abandon altogether.

CUP Authority Changes

The Municipality published an article exploring the scope of CUP authority in 2008. See *Zoning 495*. Much of that article is still relevant and important to a full understanding of CUP authority in Wisconsin. However, the 2017 CUP law changes, a reaction to the Wisconsin Supreme Court’s 2017 decision in *AllEnergy v. Trempealeau County*, 2017 WI 52, 375 Wis. 2d 329, 895 N.W.2d 368, substantially altered CUP authority in several critical areas.

First, the law amends the zoning enabling statute to specify that any CUP “condition imposed must be related to the purpose of the ordinance and be based on substantial evidence.” Wis. Stat. §62.23(7)(de)2.a. It also mandates that CUP requirements and conditions “must be reasonable and, to the extent practicable, measurable” Wis. Stat. §62.23(7)(de)2.b. These new obligations are problematic.

Prior to the change, general non-specific CUP requirements in zoning ordinances were reasonable and, thus legally permissible. Now, they must be based on substantial evidence and, where practicable, they must be measurable to be reasonable.

One challenge will be creating reasonable CUP requirements that are meaningful. Drafting an ordinance with reasonable requirements to govern the likely as well as all possible contingencies relating to a conditional use will be a very difficult task. A meaningful requirement that is legally reasonable in one circumstance may likely be unreasonable in another. That is due to the nature of conditional uses; their impacts vary based on location, which is why they were not classified as permitted uses in the first instance.

And, what should zoning officials make of the “substantial evidence” and “measurable” requirements? Must adoption or amendment of CUP ordinances be accompanied by a record that satisfies the substantial evidence threshold? Assuming we can figure out what “to the extent practicable” also means, how measurable does a CUP requirement have to be to comply with the new law? There are no answers to these questions in the statute and, the courts, through costly litigation, will likely be the only authority that might satisfy a disgruntled developer.

Second, what qualifies as substantial evidence – the information an administrative body is allowed to rely on in reaching its decision – is now defined by statute instead of case law. “Substantial evidence means facts and information,

other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion.” Wis. Stat. §62.23(7)(de)1.b.

While similar to what the substantial evidence test was, *see AllEnergy, 2017 WI 52 at ¶ 76*, it is clear that the change was enacted to try and limit the type of information a zoning authority can rely on in deciding whether to grant a CUP. It must not only be facts and information instead of personal preferences or speculation, but those facts and information must “directly pertain” to the requirements and conditions in the zoning ordinance or established by the zoning board.

It will be impossible to confine public hearing testimony from citizens to

only facts and information that directly pertains to CUP requirements and conditions. Most people do not have the kind of legal training or experience to provide wholly objective testimony at an informal zoning hearing. When this happens, are members of the zoning board legally permitted to redirect the testimony of the citizen without being challenged by the applicant as impermissibly biased? That is just one impact of the substantial evidence requirement.

The language prohibiting reliance on speculation for substantial evidence is another problem area. CUPs are inherently uses with higher risks of negative impacts on other uses. But, the negative impact varies from location to location. Therefore, is evidence about decreased property values or other negative impacts associated with a similar use at a different location speculation or

non-speculation about probable impacts at the proposed location?

Third, the city and village zoning enabling statute was amended to specify that “if an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the city ordinance or those imposed by the city zoning board, the city *shall* grant the conditional use permit.” Wis. Stat. §62.23(7)(de)2.a. (emphasis added). This language embraces a minority zoning legal theory the Wisconsin Supreme Court rejected in *AllEnergy* that “where a [CUP] applicant has shown that all conditions and standards, both by ordinance and as devised by the zoning committee, have been or will be met, the applicant is entitled to the issuance of a permit.” *AllEnergy, 2017 WI 52 at ¶119*.

Adding this legal principle to Wisconsin zoning law shifts the legal burden from

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a CUP applicant to the municipal governmental body responsible for making the CUP decision. The municipality must establish a permit requirement or condition by ordinance or develop conditions that are based on substantial evidence provided at the hearing. The burden shifting limits the effectiveness of the entire CUP review process and moves CUPs much closer to permitted use status than might be desirable in most circumstances.

As already noted, the pre-hearing ordinance requirements are likely to be watered down and less meaningful in order to survive a reasonableness challenge since they will apply to all proposed CUPs that have highly variable impacts based on location. This will make CUP applications much harder to deny.

Public officials do not welcome zoning litigation. It is inefficient and costly. So, even assuming that they will have a solid understanding of substantial evidence, zoning board members will be very cautious with their authority to impose CUP conditions based on substantial evidence introduced at the zoning hearing. Again, the burden shifting will make CUP applications much more difficult to deny.

Could a CUP applicant preempt the entire CUP process by simply promising full compliance when he files the CUP application? Probably not because a public hearing is mandated and the zoning board is vested with some authority to impose conditions that are based on substantial evidence after the public hearing and before granting a permit. However, as long as the CUP applicant agrees to abide by all the requirements and conditions, zoning board discretion is nullified and it must grant the CUP.

Responding to the Changes

The legislative changes did not reduce the adverse impact risks associated with conditional uses for adjoining properties, neighborhoods, or communities. The risks are still present and, absent a

municipal response, are now even greater given the reduced ability to address those negative externalities. So, cities and villages should consider their options given the new legislative restrictions on their CUP authority.

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Cities and villages can start with the knowledge that they are not legally required to have conditional uses in their zoning codes. Moreover, in most cases, the legislative decision by a city council or village board to include or not include a particular land use in a zoning district is essentially immune from legal challenge. The legislature may have severely curtailed city and village authority to deny a CUP request but it did not have any impact on city council or village board legislative discretion to classify land uses as conditional or permitted or determine how many, if any, conditional uses a city or village should have in a particular zoning district. So, one legally permissible response to the new laws might be elimination of all existing conditional uses in zoning districts or limiting them to a very select group of low-risk uses.

With the new laws, the legislature eliminated much of the prior legal authority cities and villages used to accommodate conditional uses while protecting property interests of adjoining landowners, the stability of neighborhoods, and the well-being of the whole community. Unless a city or village is willing to accept a conditional use in a zoning district – with much less ability to guide when and where it exists – then

eliminating them altogether or greatly reducing their availability is a reasonable and legally permissible response.

In addition, cities and villages will need to closely examine their existing conditional use permit requirements set by ordinance. As noted above, they must be reasonable, related to the purpose of the ordinance and, to the extent practicable, measurable. Thus, general requirements for CUPs commonly found in existing zoning ordinances are now suspect and subject to legal challenge. Instead, revised requirements should be information-based. In addition, a city or village will need to show that revised requirements are measurable, unless impracticable. And, if impracticable, they will need to be able demonstrate why.

Conclusion

Conditional use zoning permits have been commonly used by cities and villages to allow riskier land use activities in zoning districts subject to review and conditions. 2017 Wisconsin Act 67 substantially altered the CUP review and condition authority cities and villages have used for the last 75 years. The status quo for conditional uses in Wisconsin has changed dramatically. Cities and villages must now decide how they will respond to these changes. Revisions to CUP requirements in zoning ordinances

will be necessary. A thorough review of conditional use designation and inclusion in zoning districts is also warranted.

Zoning 523

About the author:

Daniel Olson is the Assistant Legal Counsel for the League. He provides legal assistance to municipal attorneys and officials through telephone inquiries, written opinions and briefs, workshop presentations, and published articles. He also assists in writing League handbooks and planning the Municipal Attorney's Institute. Daniel joined the League staff in 2001. Contact Daniel at danolson@lwm-info.org



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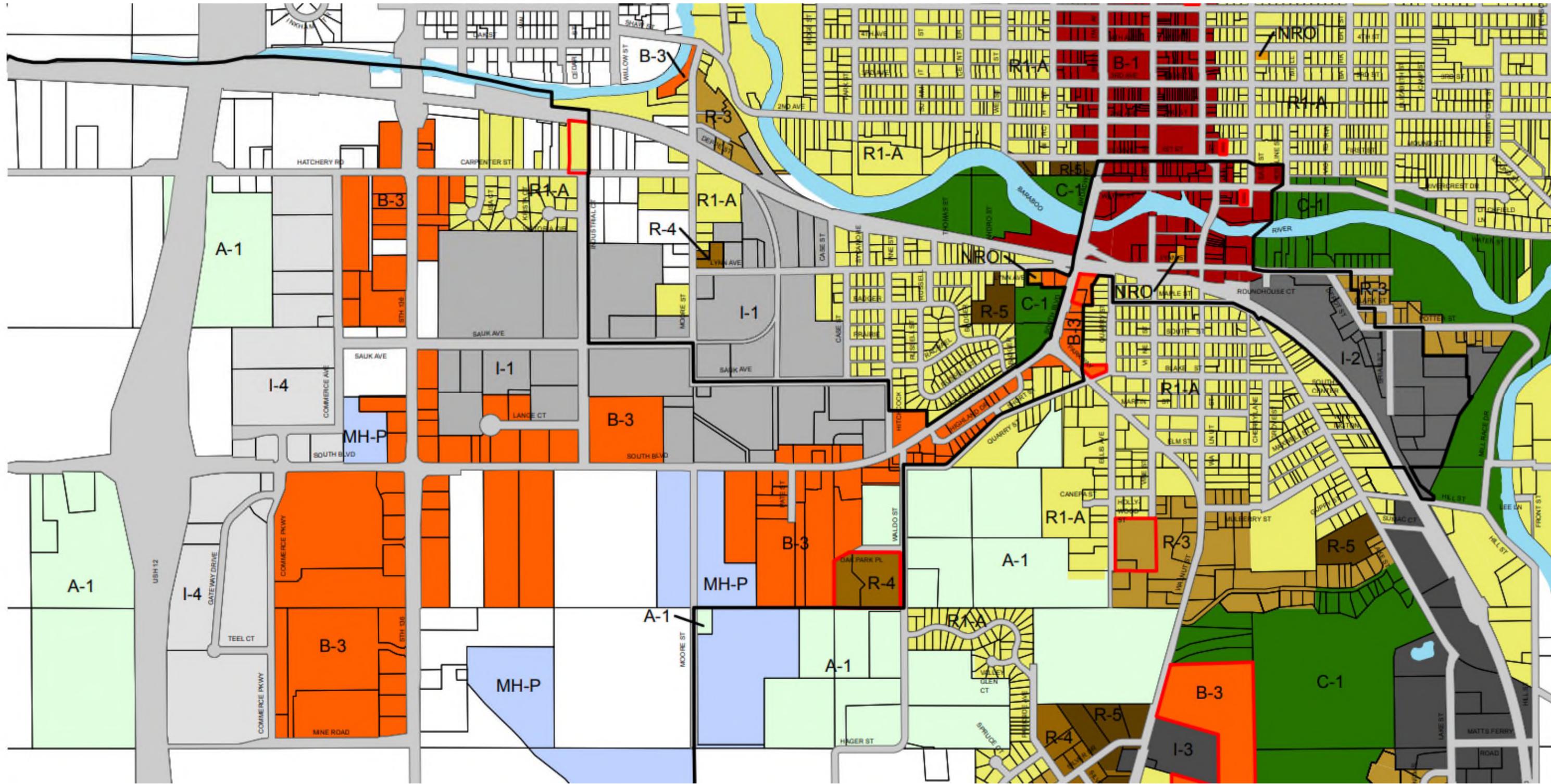
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17.36C CONDITIONAL USE OVERLAY DISTRICT. (2252 04/10/07) A conditional use overlay district, within which all permitted and conditional uses for the underlying zoning district become conditional uses, is created with the following boundaries: (description intentionally omitted).

- (1) **PROHIBITED USES** (regardless of underlying zoning classification):
- a. Agricultural chemical manufacturing or processing plants, distribution facilities handling predominantly agricultural chemicals, storage facilities handling predominantly agricultural chemicals or bulk sale facilities
 - b. Agricultural services
 - c. Amusement and recreation services
 - d. Animal shelters
 - e. Asphalt products manufacturing or processing plants
 - f. Automobile car washes
 - g. Automobile sales establishments
 - h. Automobile service stations
 - i. Automotive, implement and recreation vehicle sales
 - j. Blacksmith shops
 - k. Boarding houses
 - l. Building supplies
 - m. Bulk building products manufacturing or processing plants involving bio-hazardous components
 - n. Bus depots
 - o. Campgrounds
 - p. Cemeteries
 - q. Communication Towers
 - r. Cultivation
 - s. Contractors-building construction
 - t. Dry cleaning establishments
 - u. Electronic circuit assembly plants
 - v. Electroplating plants
 - w. Exterminating shops
 - x. Feed lots
 - y. Foundries and forge plants
 - z. Fraternities and sororities
 - aa. Garages -- for repair and servicing of motor vehicles, including body repair, painting or engine rebuilding
 - bb. Garden supplies
 - cc. Grazing of livestock
 - dd. Hazardous chemical manufacturing or processing plants, distribution facilities handling predominantly hazardous chemicals, storage facilities handling predominantly hazardous chemicals or bulk sale facilities
 - ee. Highway salt storage areas
 - ff. Indoor Institutional
 - gg. Industrial liquid waste storage areas
 - hh. Junkyards and auto graveyards
 - ii. Landfills or facilities for the treatment, storage or disposal of waste
 - jj. Licensed Manufactured Home Parks
 - kk. Meat and meat products manufacturers

- ll. Metal reduction and refinement plants
- mm. Mining operations (gravel pits)
- nn. Mobile home dealers
- oo. Motor and machinery service and assembly shops
- pp. Non-Commercial community buildings for social gatherings, emergency shelters, laundry or similar common usage for a Manufacture Home Park community.
- qq. Paint products manufacturing
- rr. Parking lots not accessory to a principal structure
- ss. Penal and correctional institutions
- tt. Petroleum products storage or processing
- uu. Photography studios, including the developing of film and pictures
- vv. Plastics manufacturing, other than molding operations and assembly operations
- ww. Printing and publishing establishments that use non-biodegradable inks and/or volatile organic compounds
- xx. Press Rooms
- yy. Pulp and paper manufacturing
- zz. Recreation and Utility trailer dealers
- aaa. Salvage Yards
- bbb. Selective cutting
- ccc. Self-service storage facility
- ddd. Self-storage rental sheds
- eee. Service buildings normally accessory to the permitted use
- fff. Sexually oriented business as defined in Section 12.15.
- ggg. Storage buildings that serve an existing permitted use
- hhh. Trailer sales or rental establishments
- iii. Trucking terminals other than those used as on-site distribution centers
- jjj. Waste transfer stations
- kkk. Wholesale establishments
- lll. Any business or industry involved the above ground bulk storage of LP or propane gas
- mmm. All metal clad or cinder block buildings.
- nnn. All non-taxable or tax-exempt properties (i.e. churches, schools, day care centers, etc.)



CONDITIONAL USE OVERLAY DISTRICT

(boundary defined by bold black line)