



PLAN COMMISSION MEETING

FREEDOM TOWN HALL

W2004 COUNTY RD S

WEDNESDAY, APRIL 9, 2025

5:30 p.m.

1. CALL TO ORDER, ROLL CALL, PLEDGE
2. VERIFICATION OF POSTING & ADOPT AGENDA
3. CONSIDERATION OF MINUTES FOR MARCH 12, 2025
4. DISCUSSION AND POSSIBLE RECOMMENDATION ON VARIANCE FOR DERCKS/FIELDS PROPERTY
5. BUILDING PERMITS REPORT
6. SANITARY DISTRICT REPORT
7. TOWN PLANNER REPORT
8. FUTURE MEETING SCHEDULE – APRIL 9th at 5:30 p.m.
9. ADJOURN

Posted on 2 Boards at the Freedom Town Hall and on the Town website on the 8th day of April 2025, by 1 PM by the Clerk's Office

Dana McHugh, Town Clerk/Treasurer

PLAN COMMISSION MEETING MINUTES

FREEDOM TOWN HALL W2004 COUNTY RD S WEDNESDAY, MARCH 12, 2025 5:30 p.m.

1. CALL TO ORDER, ROLL CALL, PLEDGE

Chairperson Linda Borneman called the meeting to order at 5:30 p.m.

Chairperson Linda Borneman, Commissioner Henry McKenna, Commissioner Dan Reinke, Commissioner Ron Mashlan, and Commissioner Sam VanHandel were all present. Also Present: Justin Carlson Town Administrator, Dana McHugh Clerk/Treasurer, Rachel Kolocheski Deputy Clerk/Treasurer, Jeff Sanders Town Planner. Chairperson Borneman Led the Pledge of Allegiance. Excused were Commissioner Darin Tiedt & Commission Mark Dollevoet.

2. VERIFICATION OF POSTING & ADOPT AGENDA

Agenda posted on the 2 board at the Town Hall and on the Town website on 3/11/25 by 11am. Motion made by Commission Reinke with a second by Commissioner Mashlan to adopt the agenda.

Vote: 5 Yes 0 No Motion Carried

3. CONSIDERATION OF MINUTES FOR FEBRUARY 12, 2025

Motion made by Commissioner McKenna with a second by Commissioner Reinke to approve February 12, 2025, meeting minutes.

Vote: 5 Yes 0 No Motion Carried

4. DISCUSSION AND POSSIBLE RECOMMENDATION OF PROPOSED SPECIAL EXCEPTION PERMIT- Jason Properties

Motion made by Chairperson Borneman with a second by Commissioner McKenna to recommend to the Town Board approval of the Jason Properties Special Exception permit with the Town Planner recommended conditions A-I and the condition that the County re-zone the partial residential square to commercial without imposing any cost to the owner so the entire lot has the same zoning.

Vote: 5 Yes 0 No Motion Carried

5. DISCUSSION AND POSSIBLE RECOMMENDATION OF PROPOSED SPECIAL EXCEPTION PERMIT- Swinkles Properties

Motion made by Commissioner Vanhandel with a second by Commissioner Reinke to recommend approval to the Town Board of the Swinkles Properties Special Exception renewal.

Vote: 5 Yes 0 No Motion Carried

6. TID #1 UPDATES

7. TID #2 UPDATES

8. REVIEW & RECOMMENDATION OF EXISTING TOWN CODE ORDINANCES

9. BUILDING PERMITS REPORT

10. SANITARY DISTRICT REPORT

11. TOWN PLANNER REPORT

Motion made by Commissioner McKenna with a second by Commissioner Vanhandel to open the floor for public discussion at 6:25pm.

Vote: 5 Yes 0 No Motion Carried

Motion made by Commissioner McKenna with a second by Chairperson Borneman to close the floor for public discussion at 6:40pm.

Vote: 5 Yes 0 No Motion Carried

Motion made by Commissioner McKenna with a second by Chairperson Borneman to open the floor for public discussion at 6:43pm.

Vote: 5 Yes 0 No Motion Carried

Motion made by Chairperson Borneman with a second by Commissioner McKenna to close the floor for public discussion at 6:49pm.

Vote: 5 Yes 0 No Motion Carried

12. FUTURE MEETING SCHEDULE – APRIL 9th at 5:30 p.m.

13. ADJOURN

Motion made by Chairperson Borneman with a second by Commissioner Reinke to adjourn the meeting at 6:49 pm.

Vote: 5 Yes 0 No Motion Carried

Dana McHugh, Town Clerk/Treasurer

I. APPLICATION

Title of Project: Dercks Variance

Name of Owner: County N Storage LLC

Name of Applicant: Derks Fields Real Estate Trust, rep. Kris Fields

Name of Developer / Surveyor / Contractor: none

II. BACKGROUND

The Applicant has submitted an 'Application for Variance' (hereafter, Application) in request of a Variance from the requirements of Section 18-050.G of the Town of Freedom Land Division Regulations (hereafter, land division ordinance) which reads as follows:

'Excessive Depth of Lots in relation to width shall be avoided and a proportion of two to one (2:1) shall be considered a desirable depth-to-width ratio under normal conditions. Depth of lots or parcels designated for commercial or industrial use shall be adequate to provide for off-street service and parking required by the use contemplated.'

The properties in question are Tax Parcel Number 090092801 (hereafter, TPN-090092801) located at N2663/N2665 CTH N and owned by County N Storage LLC, and TPN-090092802 located at N2657 CTH N and owned by Derks Fields Real Estate Trust (see Exhibit 1).

III. ZONING ORDINANCE

TPN-090092801 is 2.72 acres in size and is zoned IND Industrial District; TPN-090092802 is 1.83 acres in size and is dual-zoned AGD General Agricultural District (hereafter, AGD District) and IN District (see Exhibit 2). TPN-090092801 hosts two structures and a mobile service facility (i.e., cell tower); TPN-090092802 hosts two Principal Uses (auto body shop and single-family dwelling) and various detached Accessory Structures (see Exhibit 1).

A. IND District

As per Section 54-306(2) of Outagamie County Chapter 54: Zoning (hereafter, zoning ordinance), 'Automobile, boat, construction and farm implement sales, service and repair' is a 'Permitted principal use and structure' in the IND District.

Section 54-306(2) of the zoning ordinance has remained unchanged since 1997.

Town Planner - The current use of the IND District portion of TPN-090092802 is **compliant** with Section 54-306(2) of the zoning ordinance.

B. AGD District

As per Section 54-128(1), referenced via Section 54-100(3) AED Exclusive Agricultural District (hereafter, AED District), of the zoning ordinance, ***'Dwellings existing before the effective date of adoption of the ordinance from which this chapter is derived, which are not accessory to or associated with agricultural uses. Until ATCP 49 is in effect, pre-existing nonfarm residences are nonconforming uses'*** is a 'Permitted principal use and structure' in the AGD District. [emphasis added]

Town Planner - The current use of the AGD District portion of TPN-090092802 is not a pre-existing structure on an AED District lot and, as such, is **noncompliant** with Section 54-128(1) of the zoning ordinance. However, Outagamie County approved the creation of the AGD District portion of the parcel specifically to allow the existing single-family dwelling. See Section III.D of this Report regarding dual zoning.

As per Section 54-128(4) of the zoning ordinance, ***'Single-family detached dwellings and mobile homes unrelated to any farm operation as a principal use and structure on individual lots, which are not part of a recorded subdivision plat as defined in chapter 52 of this Code of Ordinances'*** is a 'Permitted principal use and structure' in the AGD District.

Town Planner - The current use of the AGD District portion of TPN-090092802 is not a principal use and structure on an individual lot and, as such, is **noncompliant** with Section 54-128(4) of the zoning ordinance. However, Outagamie County approved the creation of the AGD District portion of the parcel specifically to allow the existing single-family dwelling. See Section III.D of this Report regarding dual zoning.

C. Additional Context

Prior to 2012, TPN-090092802 hosted an auto body shop and a different single-family dwelling (hereafter, previous single-family dwelling) from the single-family dwelling present in 2025. The previous single-family dwelling was located in the Street Yard between the Principal Use (i.e., auto body shop) and CTH N (see Exhibits 3a and 3b).

As presented in Section III.B of this Report, the previous single-family dwelling was a 'Nonconforming Use' defined in Wis. Stat. § 59.69(10) as:

'A use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform with the use restrictions in the current ordinance.' [emphasis added]

Section 54-41 of the zoning ordinance establishes standards for ‘Nonconforming Uses of Structures’ and reads as follows:

‘Where at the effective date of adoption or amendment of the ordinance from which this chapter is derived the use of a structure exists which would not be permitted or permissible in the district in which it is located and where such use involves a structure with a fair market value exceeding \$10,000.00, such use may be continued subject to the following restrictions:

*(5) If a structure occupied by a nonconforming use is removed, destroyed or damaged to an extent of more than 50 percent of its fair market value at the time of destruction, **the nonconforming use shall not be resumed.**’ [emphasis added]*

Section 54-41(5) of the zoning ordinance has remained unchanged since 1997.

Town Planner - The previous single-family dwelling was a Nonconforming Structure. When it was lost to fire, Outagamie County chose not to enforce the requirements of Section 54-41(5) of the zoning ordinance. Instead, the County established an AGD District “footprint” within an existing IND District parcel (again, see Exhibit 2) which created the means by which a Nonconforming Use could be continued. Allowing a Nonconforming Use (previous single-family dwelling) to resume (current single-family dwelling) would be ultra vires, meaning an approval “beyond one’s legal authority or power.” However, once the County approved the creation of the AGD District within TPN-090092802, a single-family dwelling became a use permitted by right under Section 54-128(4) of the zoning ordinance. The Town of Freedom Building Inspector issued a Building Permit for the current single-family dwelling in 2012 (see Exhibit 4).

D. Dual Zoning

Dual zoning refers to a single lot of record hosting two or more base zoning districts (e.g., AGD District and IND District). Dual zoning creates a number of potential conflicts including accurately locating the boundary between the two zones, compliance with minimum lot size and setback requirements, providing safe access to the road network, and the determination of allowable uses and required parking spaces, among others. Most modern zoning ordinances implicitly prohibit dual zoning. Some do so explicitly. Below is an example of an explicit prohibition:

‘The boundaries of a base zoning district shall correspond with the boundaries of a legal lot. No un-subdivided property shall possess more than one base zone.’¹

¹ Source: City of Waupaca Zoning Ordinance.

The [Outagamie County] zoning ordinance is a parcel-based ordinance, but it does not explicitly prohibit dual zoning. However, Section 54-4 of the zoning ordinance provides the following definitions applicable to the matter at hand:

'Accessory use or structure means a use or structure on the same lot with the principal use or structure and of a nature customarily incidental and subordinate to the principal structure.'

'Lot means a parcel of land used or set aside and available for use as the site for one or more buildings and buildings accessory thereto or for any other purpose, in one ownership and not divided by a street, nor including any land within the limits of a public or private street right-of-way.'

Although undefined in the zoning ordinance, the Principal Use of a lot is the main use of land or building as distinguished from a subordinate or accessory use. For example, the Principal Use of a residential lot may be a single-family dwelling while an Accessory Use of same might be a detached garage.

The single-family dwelling located in the Rear Yard of TPN-090092802 is not accessory to the auto shop.

Town Planner - Upon approval of the AGD District footprint the current single-family dwelling joined the existing auto shop as a Principal Use of TPN-090092802.

IV. CONCEPT LAND DIVISION

In December 2024 the Applicant submitted a Concept Land Division for review by the Town Planner. Submittal of a concept is not a requirement of the land division ordinance but offered to property owners as a courtesy to provide informal review and feedback regarding the viability of the proposed land division prior to formal submittal of the 'Application for Minor Land Division.'

The intent of the concept submitted by the Applicant was to divide TPN-090092801 and purchase the newly created lot in order to expand the existing business at TPN-090092802, Al Dercks Autobody (see Exhibit 5). CPC reviewed the concept and recommended denial due to noncompliance with Section 18-050.G of the land division ordinance which reads as follows:

*'Excessive Depth of Lots in relation to width **shall be avoided** and a proportion of two to one (2:1) shall be considered a desirable depth-to-width ratio under normal conditions. Depth of lots or parcels designated for commercial or industrial use shall be adequate to provide for off-street service and parking required by the use contemplated.'* [emphasis added]

See Exhibits 6a through 6e for Staff Report dated 31 Dec 24.

A. Additional Context

Article VIII of the land division ordinance established standards for 'Lot Line Adjustments' in the Town of Freedom. As per Section 18-200.B(56) of the land division ordinance, 'Lot Line Adjustment' is defined as:

'The adjusting of common property line(s) or boundaries between adjacent lots, tracts, or parcels for the purpose of accommodating a transfer of land, rectifying a disputed property line location, or freeing such a boundary from any difference or discrepancies. The resulting adjustment shall not create any additional lots, tracts, or parcels, and all reconfigured lots, tracts, or parcels shall contain sufficient area and dimension to meet minimum requirements for zoning and building purposes.'

The intent of the concept submitted by the Applicant was to add land to TPN-090092802 from the abutting parcel to the north, TPN-090092801, to expand the Principal Use (auto body shop) at TPN-090092802.

Section 18-113 of the land division ordinance reads as follows:

'The Lot Line Adjustment will be reviewed administratively by the Town Planner. A Lot Line Adjustment may be approved pursuant to this ordinance, provided the resulting lot line adjustment is compliant with this Chapter and the zoning ordinance. The petitioner shall be notified in writing by the Town Planner of any conditions of approval or the reasons for rejection. (amended by ord. 2024-06)'

Town Planner - The Town of Freedom created Article VIII of the land division ordinance to provide a more efficient means by which abutting property owners may transfer land without the need for Plan Commission review and Town Board approval so long as the resulting lots are compliant with the land division ordinance and zoning ordinance.

Outagamie County administers land division regulations under Chapter 52: Subdivisions and Platting. According to the Applicant, Outagamie County will not approve a Lot Line Adjustment mainly due to the dual-zoning of TPN-090092802.

V. LAND DIVISION VARIANCES: WISCONSIN

Unlike zoning ordinances, variances granted under a subdivision ordinance (i.e., land division ordinance) are not regulated by statute. They are, however, guided by the law. A local unit of government may choose to allow or not variances to land division standards.² When allowed, they must be established in the land division ordinance. Most subdivision ordinances in Wisconsin, including the [Freedom] land division ordinance, establish standards and procedures for

² 'Chapter 15: Variances', Zoning Board Handbook, 2nd Edition, 2006, UW-Stevens Point Center for Land se Education and UW-Extension.

variances...most of which are adapted from zoning variances. These standards and the terms by which they may be granted (as established in case law; see footnotes), are presented on the following pages.

A. Hardship

Unnecessary hardship must be due to unique physical limitations of the property, such as steep slopes or wetlands that prevent compliance with the ordinance.³ The circumstances of an applicant are not a factor in deciding variances.⁴ Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance.⁵ Unnecessary hardship exists when compliance would unreasonably prevent the Owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.⁶

B. No Harm To Public Interest

A variance may not be granted which results in harm to public interests.⁷ The courts have determined public interest to be best determined by the Purpose section of the ordinance.

C. Additional Standards

Published case law has applied the following additional standards to decisions regarding the granting of variances.

1. An applicant may not claim hardship because of conditions which are self-imposed.⁸
2. Circumstances of an applicant such as a growing family or desire for a larger garage are not a factor in deciding variances.⁹
3. Economic loss or financial hardship do not justify a variance. The test is not whether a variance would maximize economic value of a property.¹⁰

³ *State ex rel. Spinner v. Kenosha County Bd. of Adjustment*, 223 Wis. 2d 99, 105-6, 588 N.W.2d 662 (Ct. App. 1998); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 410, 577 N.W.2d 813 (1998); *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 255-56, 469 N.W.2d 831 (1991); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478, 247 N.W.2d 98 (1976).

⁴ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98.

⁵ *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 256, 469 N.W.2d 831 (1991); *State v. Winnebago County*, 196 Wis. 2d 836, 846, 540 N.W.2d 6 (Ct. App. 1995).

⁶ Zoning Board Handbook 2nd Edition, UW-Stevens Point Center for Land Use Education, 2006.

⁷ *State v. Winnebago County*, 196 Wis. 2d 836, 846-47, 540 N.W.2d 6 (Ct. App. 1995); *State v. Kenosha County Bd. of Adjustment*, 218 Wis. 2d 396, 407-8, 577 N.W.2d 813 (1998).

⁸ *State ex rel. Markdale Corp. v. Bd. of Appeals of Milwaukee*, 27 Wis. 2d 154, 163, 133 N.W.2d 795 (1965); *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 479, 247 N.W.2d 98 (1976).

⁹ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98 (1976).

¹⁰ *State v. Winnebago County*, 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. Of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989).

4. Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance.¹¹
5. A lack of objections from neighbors does not provide a basis for granting a variance.¹²

VI. VARIANCES: TOWN OF FREEDOM

Section 18-130.A of the land division ordinance establishes standards for ‘Variances and Exceptions’ and reads as follows:

‘Where the Plan Commission finds that extraordinary hardships or particular difficulties may result from strict compliance with these regulations, it may recommend to the Town Board variances or exceptions to the regulations so that substantial justice may be done and the public interest secured, provided that such variance or exception shall not have the effect of nullifying the intent and purpose of this Chapter. The Plan Commission shall not recommend variances or exceptions to the regulations of this Chapter unless it shall make findings based upon the evidence presented to it in each specific case based upon the following conditions:

- (1) The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property or improvements in the neighborhood in which the property is located.*
- (2) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.*
- (3) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.*
- (4) The variance will not in any manner vary the provisions of other Town ordinances, the comprehensive plan, or any Town official map. (amended by ord. 2024-06)’*

VII. REQUESTED VARIANCE

The Applicant’s arguments in support of the requested Variance are provided below and on the following pages, followed by CPC’s response.

A. Absence of Detriment

The Applicant / Agent shall explain how the proposed land division, lot line adjustment, lot combine, or other action regulated under the Town of Freedom Land Division Regulations will

¹¹ *Von Elm v. Bd. of Appeals of Hempstead*, 258 A.D. 989, 17 N.Y.S.2d 548 (N.Y. App. Div. 1940).

¹² *Arndorfer v. Sauk County Bd. of Adjustment*, 162 Wis. 2d 246, 254, 469 N.W.2d 831 (1991).

not be detrimental to the public safety, health, or welfare, or injurious to other property or improvements in the neighborhood in which the property is located.

1. Applicant Response:

'The division of lot parcel number 09092801 will create a change in the driveway entrance to the 2 parcels. The moving of the driveway would position the driveway, a 100 feet further North from Lau Rad which long term may help prevent traffic backups on a major highway when cars are pulling into our business off the Highway. In turn this is actually a benefit to public safety and welfare.'

2. Town Planner Response:

CPC agrees with the Applicant's assertion the proposed land division will not be detrimental to the public safety, health, or welfare, or injurious to other property or improvements in the neighborhood in which the property is located.

For the reasons cited above, the requested Variance **passes** the 'Absence of Detriment' test.

B. Special or Unique Conditions

The Applicant / Agent shall describe how the special or unique conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property:

1. Applicant Response:

'Our home & business are located on parcel #090092802, we have split zoning which was done @13 years ago. Due to the split zoning, we have special/unique conditions. If we do anything on our lot as far as moving the lot line, we run into zoning issues w/ the county. The town would approve the moving of the lotline even though it doesn't reach the 2:1 ratio. But the county will not because of zoning. County will approve splitting but the town won't because of the ratio. The split zoning creates very unique conditions for the town to consider.'

2. Town Planner Response:

CPC disagrees with the Applicant's assertion of special or unique conditions applying to the lot or parcel. Section 18-001 of the land division ordinance reads as follows:

'It is the general intent of this Chapter to regulate the division of land so as to:

- B. Obtain the wise use, conservation, protection, and proper development of the Town's soil, water, wetland, woodland, and wildlife resources and*

*attain a proper adjustment of land use and development to the supporting
and sustaining natural resource base.*

D. Further the orderly layout and appropriate use of land.

N. Facilitate the further division of larger tracts into smaller parcels of land.

The maximum depth-to-width ratio exists to further the intent of the ordinance as presented above by minimizing the negative impacts of relatively long, narrow lots on agricultural land and the natural resource base and to ensure, in time, the means by which to appropriately divide larger parcels to meet future development demand.

Any special or unique conditions that exist apply to exclusively to TPN-090092802, the existing dual-zoned lot (again, see Exhibit 5). Although the proposed lot is noncompliant with Section 18-050.G of the land division ordinance (i.e., maximum depth-to-width), the ordinance provides the means by which the Applicant could achieve the purpose of the land division without dividing TPN-090092801...a *lot line adjustment*. As per Section 18-110 of the land division ordinance, 'A Lot Line Adjustment is an adjustment or relocation of property line(s) between adjacent lots that does not result in the creation of additional lots, from what was originally platted or mapped.'

Shifting the northern boundary of TPN-090092802 the desired distance northward would be allowable under the land division ordinance were it not for the dual-zoned status of TPN-090092802. Put another way, it is the zoning ordinance, not the land division ordinance, that prevents the use of a lot line adjustment...the appropriate mechanism through which to achieve the purpose of the proposed land division.

For the reasons cited above, the requested Variance **fails** the 'Special or Unique Conditions' test.

C. Hardship

The Applicant / Agent shall describe how the particular physical surroundings, shape, or topographical conditions of the specific property involved creates a particular hardship, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out:

1. Applicant Response:

'Our property which is parcel #09092802 and the 100' north of us, which is part of parcel #090092801, were plotted off way before our time at this property. When these two lots were created, they followed the farmer ditch which is to the west of the property behind our home. Hence doing that, they created 2 really deep lots which have now become an issue. Our current lot is 130.88 feet wide by 715.56 deep at the furthest point. That is currently our homestead on the west/back portion, our body shop in the larger building and my real estate business in the smaller building up front (with of the split zoning) so if we would apply to move the lot line, there is no way we could have both of our businesses and open a dealership under a special use permit*

(we wouldn't meet the county requirements). The lot that we are trying to create would be 100' wide by 587.11' deep at the furthest point. After speaking with the neighbor & finding out he was willing to divide the land and sell us the portion of land closest to us, we went and applied for our dealer's license. After applying, we do not see any other viable option for us other than to keep that piece (the new lot) as our car dealership. So that land and building would be used for the dealership for light mechanical, like it is now and the sales of vehicles giving us the frontage that we would need to display cars, area to park cars that need repair or to be inspected. We could put up additional fencing and have better parking. This would help clean up the body shop as well, which would be a benefit to the town as well having a better appearance entering Freedom. Based on the subdivision ordinance 18 - 050, which reads: "Excessive Depth of Lots in relation to width shall be avoided and a proportion of two to one (2:1) shall be considered a desirable depth-to-width ratio under normal conditions. Depth of lots or parcels designated for commercial or industrial use shall be adequate to provide for off-street service and parking required by the use contemplated." Even if we moved the lot line, we would not meet that ratio requirement. So, this has become a very big hardship to overcome. There is no way of meeting this criteria on this land without getting a variance.'

2. Town Planner Response:

CPC disagrees with the Applicant's assertion particular physical surroundings, shape, or topographical conditions of the specific property involved creates a particular hardship, as distinguished from a mere inconvenience applies to the proposed lot.

Again, the layout of the existing lot has no bearing on the matter at hand. The land division ordinance does not apply to existing lots.

The courts have repeatedly ruled unnecessary hardship exists due to unique physical limitations of the property and not the desires of the Applicant (see Section V.A on page 6 of this Report). Unnecessary hardship exists when compliance would unreasonably prevent the Owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.¹³ Once again, TPN-090092802 is an existing lot hosting a Principal I-1 District Use: *'Automobile, boat, construction and farm implement sales, service and repair.'* The circumstances of an applicant (i.e., the desire for more land to expand the business) are not a factor in deciding variances¹⁴ nor does economic loss or financial hardship justify a variance. The Applicant's desire to grow or maximize the value of the business can play no role in the decision to approve a Variance.¹⁵

For the reasons cited above, the requested Variance **fails** the 'Hardship' test.

¹³ Zoning Board Handbook 2nd Edition, UW-Stevens Point Center for Land Use Education, 2006.

¹⁴ *Snyder v. Waukesha County Zoning Bd. of Adjustment*, 74 Wis. 2d 468, 478-79, 247 N.W.2d 98.

¹⁵ *State v. Winnebago County*, 196 Wis. 2d 836, 844-45, 540 N.W.2d 6 (Ct. App. 1995); *State v. Ozaukee County Bd. Of Adjustment*, 152 Wis. 2d 552, 563, 449 N.W.2d 47 (Ct. App. 1989).

D. Public Interest

The Applicant / Agent shall explain how the requested variance will not in any manner vary the provisions of other Town ordinances or the Official Map.

1. Applicant Response:

'Based on the special conditions, the hardship of this property, and the unique circumstances of industrial land outside of the industrial park, there is no other property similar in Freedom to the best of my knowledge. Hence this should not create any issues with public interest as far as town ordinances or official mapping.'

2. Town Planner Response:

CPC agrees with the Applicant's assertion the requested Variance will not vary the provisions of other Town ordinances or the Official Map.

For the reasons cited above, the requested Variance **passes** the 'Public Interest' test.

VIII. ROLE OF THE PLAN COMMISSISON

Section 18-130.A of the land division ordinance reads as follows:

*'Where the Plan Commission finds that **extraordinary hardships** or particular difficulties may result from strict compliance with these regulations, it may recommend to the Town Board variances or exceptions to the regulations so that substantial justice may be done and the public interest secured, provided that such variance or exception shall not have the effect of nullifying the intent and purpose of this Chapter. The Plan Commission shall not recommend variances or exceptions to the regulations of this Chapter unless it shall make findings based upon the evidence presented to it in each specific case based upon the following conditions:*

- (1) The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property or improvements in the neighborhood in which the property is located.*
- (2) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.*
- (3) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out.*
- (4) The variance will not in any manner vary the provisions of other Town ordinances, the comprehensive plan, or any Town official map. (amended by ord. 2024-06)' [emphasis added]*

Each of these conditions must be met for a Variance to be authorized. The Plan Commission's role is to examine the evidence before it and consider these conditions and existing case law to determine whether an "extraordinary hardship" has been created by the requirements of Section 18-050.G of the land division ordinance. It shall then make a recommendation to the Town Board to approve or deny the requested Variance.

IX. ROLE OF THE TOWN BOARD

Like the Plan Commission, Town Board's role is, following an examination the evidence before it, consideration of the conditions imposed by Section 18-130.A of the land division and existing case law, and review of the Plan Commission's recommendation, to determine whether an "extraordinary hardship" has been created by the requirements of Section 18-050.G of the land division ordinance. In so doing, the Town Board may approve, approve with modifications, or deny the requested Variance.

X. IN SUMMARY

The requirements of the land division ordinance have not created a hardship for the Applicant, at least not as would be defined by the courts. Any hardship that may exist is limited to the existing lot, TPN-090092802, and results from Outagamie County's approval of dual zoning. Existing lots do not fall under the authority of the land division ordinance. They must; however, comply with the requirements of the zoning ordinance. If a Variance is necessary for the proposal to proceed that Variance should be pursued through the Outagamie County zoning ordinance or subdivision and platting ordinance.

Finally, should the Town Board be inclined towards allowing the proposed land division as drawn, the appropriate mechanism is not via a Variance but through an amendment to the land division ordinance to modifying or eliminating or modify the depth-to-width ratio.

XI. CPC RECOMMENDATION¹⁶

Based upon the facts, as presented in this Report, the requested variance is **not approvable** under the land division ordinance. As such, CPC recommends **denial**.

¹⁶ CPC recommendations are based upon professional staff review of application materials provided to CPC. This report is authored by a municipal planner, not a licensed attorney, and does not constitute a legal opinion.

Exhibit 2



Exhibit 2

- Green shading – AGD District
- Purple shading – IND Industrial District

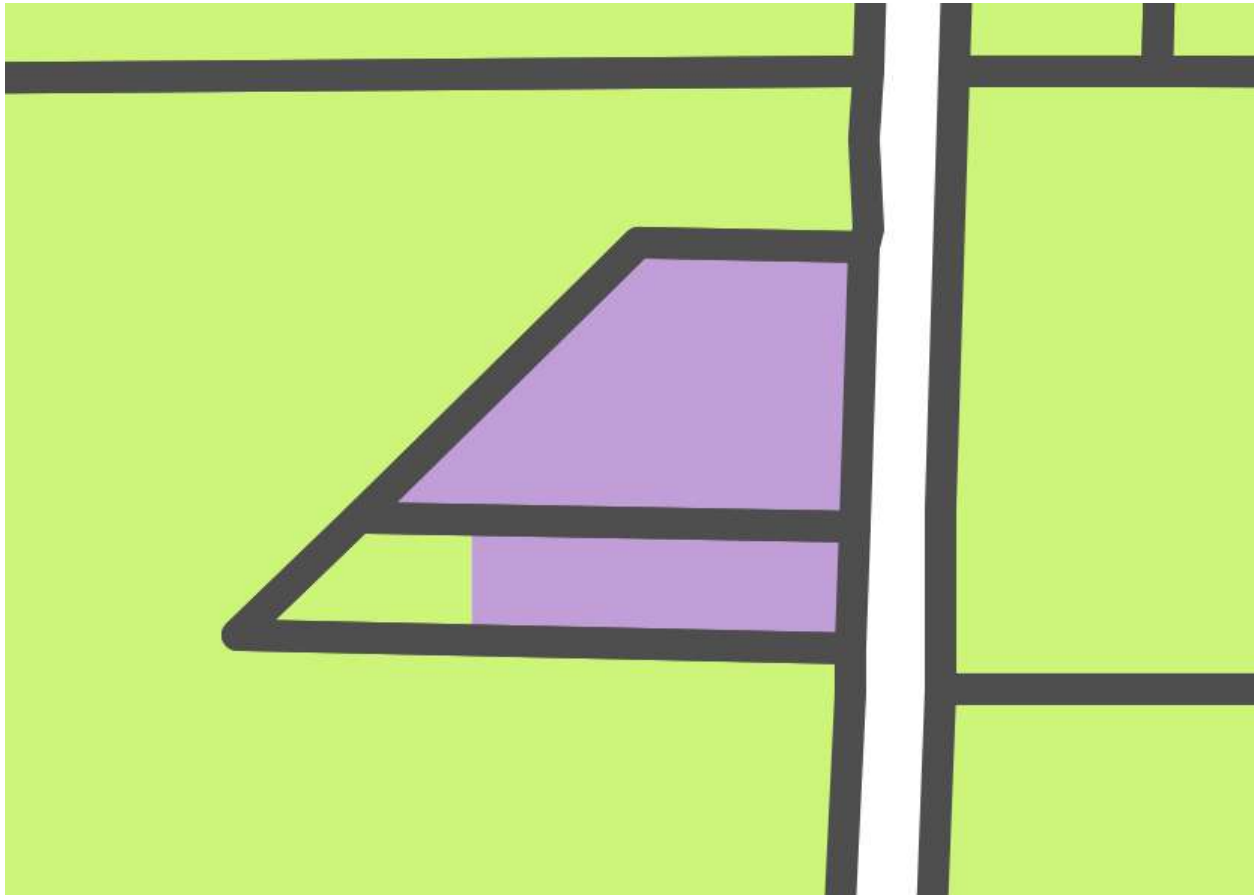


Exhibit 3a

- Red circle – Original Single-Family Dwelling (image from March 2010)



Exhibit 3b

Red circle – Original Single-Family Dwelling (image from 1957)



Exhibit 4

Wisconsin Division of Safety and Buildings Wisconsin Stats. 101.63, 101.73		WISCONSIN UNIFORM BUILDING PERMIT APPLICATION				Application No. 2012-58																																														
		Instructions on back of second ply. The information you provide may be used by other government agency programs [(Privacy Law, s. 15.04 (1)(m))]				Parcel No. 090-0928-02																																														
PERMIT REQUESTED		<input checked="" type="checkbox"/> Constr. <input checked="" type="checkbox"/> HVAC <input checked="" type="checkbox"/> Electric <input checked="" type="checkbox"/> Plumbing <input checked="" type="checkbox"/> Erosion Control <input type="checkbox"/> Other:																																																		
Owner's Name Allen Derks		Mailing Address N2651 Cty Rd. N				Tel.																																														
Contractor Name & Type Fields of Real Estate Sales + Construction		Lic/Cert# 1179343		Mailing Address N2659 Cty Rd. N		Tel. & Fax (920) 707-3002 c 757-0368 f																																														
Dwelling Contractor (Constr.) Kristina Fields		1179344		The Dwelling Contr. Qualifier shall be an owner, CEO, COB or employee of the Dwelling Contr.																																																
HVAC																																																				
Electrical Schmidt Electric		171258		Kankakee, WI		(920) 740-4757																																														
Plumbing Hanson's Quality Plumbing		222587		Appleton, WI		(920) 730-0305																																														
PROJECT LOCATION		Lot area Sg. ft.		<input type="checkbox"/> One acre or more of soil will be disturbed		<input checked="" type="checkbox"/> Town <input type="checkbox"/> Village <input type="checkbox"/> City of																																														
Building Address TBD		County Outagamie		Subdivision Name N/A		Lot No. N/A																																														
Zoning District(s) Gen. Ag.		Zoning Permit No. 090092802		Setbacks: Front 20.1 ft. Rear 80 ft. Left 27.6 ft. Right 23.8 ft.		Block No. N/A																																														
1. PROJECT		3. OCCUPANCY		6. ELECTRIC		9. HVAC EQUIP.																																														
<input checked="" type="checkbox"/> New <input type="checkbox"/> Repair <input type="checkbox"/> Alteration <input type="checkbox"/> Raze <input type="checkbox"/> Addition <input type="checkbox"/> Move <input type="checkbox"/> Other:		<input checked="" type="checkbox"/> Single Family <input type="checkbox"/> Two Family <input type="checkbox"/> Garage <input type="checkbox"/> Other:		Entrance Panel Amps: 200 <input checked="" type="checkbox"/> Underground <input type="checkbox"/> Overhead		<input checked="" type="checkbox"/> Furnace <input type="checkbox"/> Radiant Basebd <input type="checkbox"/> Heat Pump <input type="checkbox"/> Boiler <input checked="" type="checkbox"/> Central AC <input type="checkbox"/> Fireplace <input type="checkbox"/> Other:																																														
2. AREA INVOLVED (sq ft)		4. CONST. TYPE		7. WALLS		12. ENERGY SOURCE																																														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Unit 1</th> <th>Unit 2</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>Unfin. Bsmt</td> <td>1881</td> <td></td> <td>1881</td> </tr> <tr> <td>Living</td> <td>1881</td> <td>Unfin Bsmt 344</td> <td>2225</td> </tr> <tr> <td>Area</td> <td>1261</td> <td></td> <td>1261</td> </tr> <tr> <td>Deck/Porch</td> <td>670</td> <td></td> <td>70</td> </tr> <tr> <td>Totals</td> <td></td> <td></td> <td>6437</td> </tr> </tbody> </table>			Unit 1	Unit 2	Total	Unfin. Bsmt	1881		1881	Living	1881	Unfin Bsmt 344	2225	Area	1261		1261	Deck/Porch	670		70	Totals			6437	<input checked="" type="checkbox"/> Site-Built <input type="checkbox"/> Mid. per WI UDC <input type="checkbox"/> Mid. per US HUD		<input checked="" type="checkbox"/> Wood Frame <input type="checkbox"/> Steel <input type="checkbox"/> ICF <input type="checkbox"/> Timber/Pole <input type="checkbox"/> Other:		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>Fuel</th> <th>Nat Gas</th> <th>LP</th> <th>Oil</th> <th>Elec</th> <th>Solid</th> <th>Solar Geo</th> </tr> </thead> <tbody> <tr> <td>Space Htg</td> <td></td> <td><input checked="" type="checkbox"/></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Water Htg</td> <td></td> <td><input checked="" type="checkbox"/></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Fuel	Nat Gas	LP	Oil	Elec	Solid	Solar Geo	Space Htg		<input checked="" type="checkbox"/>					Water Htg		<input checked="" type="checkbox"/>				
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Water Htg		<input checked="" type="checkbox"/>																																																		
		5. STORIES		8. USE		10. SEWER																																														
		<input checked="" type="checkbox"/> 1-Story w/ Bsmt <input type="checkbox"/> 2-Story <input type="checkbox"/> Other: <input type="checkbox"/> Plus Basement		<input type="checkbox"/> Seasonal <input checked="" type="checkbox"/> Permanent <input type="checkbox"/> Other:		<input type="checkbox"/> Municipal <input checked="" type="checkbox"/> Sanitary Permit Property																																														
				11. WATER		14. EST. BUILDING COST w/o LAND																																														
				<input type="checkbox"/> Municipal <input checked="" type="checkbox"/> On-Site Well		\$ 150,000																																														
<p>I understand that I am subject to all applicable codes, laws, statutes and ordinances, including those described on the reverse side of the last ply of this form; am subject to any conditions of this permit; understand that the issuance of this permit creates no legal liability, express or implied, on the state or municipality; and certify that all the above information is accurate. If one acre or more of soil will be disturbed, I understand that this project is subject to ch. NR 151 regarding additional erosion control and stormwater management and the owner shall sign the statement on the back of the permit if not signing below. I expressly grant the building inspector, or the inspector's authorized agent, permission to enter the premises for which this permit is sought at all reasonable hours and for any proper purpose to inspect the work which is being done.</p> <p><input checked="" type="checkbox"/> I vouch that I am or will be an owner-occupant of this dwelling for which I am applying for an erosion control or construction permit without a Dwelling Contractor Certification and have read the cautionary statement regarding contractor responsibility on the reverse side of the last ply of this form.</p>																																																				
APPLICANT (Print): Allen J. Derks				Sign: Allen J. Derks		DATE 9-21-12																																														
APPROVAL CONDITIONS				This permit is issued pursuant to the following conditions. Failure to comply may result in suspension or revocation of this permit or other penalty. <input type="checkbox"/> See attached for conditions of approval.																																																
Pol check 300 # 1140				Conditionally Approved																																																
Pol check 1003 # 1141				Heat Loss																																																
ISSUING JURISDICTION		<input type="checkbox"/> Town of <input type="checkbox"/> Village of <input type="checkbox"/> City of <input checked="" type="checkbox"/> County of <input type="checkbox"/> State of		State-Contracted Inspection Agency#:		Municipality Number of Dwelling Location																																														
Freedom		OUT		44018																																																
FEES:		PERMIT(S) ISSUED		WIS PERMIT SEAL #		PERMIT ISSUED BY:																																														
Plan Review Adm 50		<input checked="" type="checkbox"/> Construction		423221		Name Paul H.																																														
Inspection 650		<input checked="" type="checkbox"/> HVAC				Date 9/24/12 Tel. 808002																																														
Wis. Permit Seal 33		<input checked="" type="checkbox"/> Electrical				Cert No. 70606																																														
Other Adm 50		<input checked="" type="checkbox"/> Plumbing																																																		
Total 300		<input checked="" type="checkbox"/> Erosion Control																																																		
220																																																				

SBD-5823(R.10/11) Distribute: ☐ Ply 1 - Issuing Jurisdiction; ☐ Ply 2- Issuer forwards to State w/in 30 days; ☐ Ply 3- Inspector; ☐ Ply 4- Applicant
\$ 1003 v 300

Exhibit 5

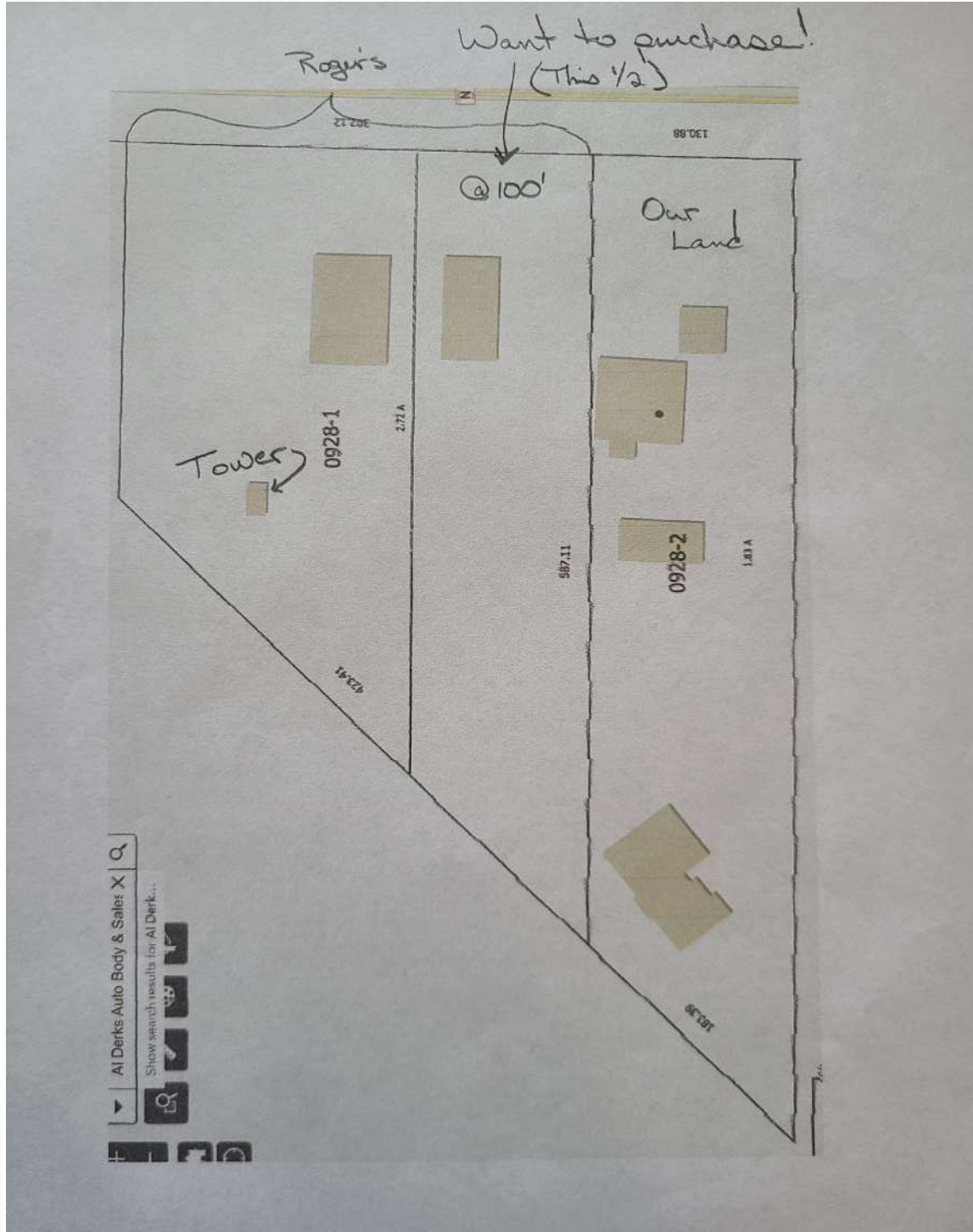


Exhibit 6a

I. APPLICATION

Title of Project: Fields Concept CSM
Name of Owner: County N Storage LLC
Name of Applicant: Derks Fields Real Estate Trust, rep. Kris Fields
Name of Developer / Surveyor / Contractor: none

II. BACKGROUND

The Owner has submitted a Concept drawing (hereafter, Concept) to divide Tax Parcel Number 090092801 (hereafter, TPN-090092801) creating a lot roughly 1.12 acres in size (see Exhibit 1) leaving a roughly 1.53-acre remnant (see Exhibit 2).

III. ZONING ORDINANCE

TPN-090092801 is 2.72 acres in size and is zoned IND Industrial District (hereafter, IND District). Section 54-309 of the Outagamie County Zoning Ordinance (hereafter, zoning ordinance) establishes 'Dimensional Requirements' for IND District lots.

IND District Dimensional Requirements			
	Requirements	Proposed Lot	Compliant
Lot			
Minimum Area	12,000 sf.	48,787 (+/-) sf.	Yes
Minimum Width	100 ft.	100 ft.	Yes
Minimum Setbacks – Accessory Structure			
Required Front Yard	35 ft.	n/a	n/a
Rear Yard	25 ft.	n/a	n/a
Side Yard	20 ft.	Not provided [1]	Undetermined
	Requirements	TPN-090092801 Remnant	Compliant
Lot			
Minimum Area	12,000 sf.	66,647 (+/-) sf.	Yes
Minimum Width	100 ft.	202 ft., 1 in.	Yes
Minimum Setbacks – Accessory Structure			
Required Front Yard	35 ft.	n/a	n/a
Rear Yard	25 ft.	n/a	n/a
Side Yard	20 ft.	Not provided [1]	Undetermined
[1] Applicant states sufficient space exists between the two structures located on TPN-090092801 to accommodate required setback. However, measurement device on Outagamie County Planning Zoning Reviewer indicates less than required forty feet of separation between buildings (see Exhibit 3).			

Survey required to determine compliance with Section 54-309 of zoning ordinance.

Exhibit 6b

IV. SUBDIVISION ORDINANCE

Section 18-023 of the Town of Freedom Land Division Regulations (hereafter, land division ordinance) reads as follows:

'No person, firm, or corporation shall divide any land located within the limits of the Town which results in a subdivision, minor land division or a replat as defined herein; no such subdivision, minor land division or replat shall be entitled to recording; and no street shall be laid out or improvements made to land without compliance with all requirements of this Chapter and the following documents:

G. The zoning ordinance and all other applicable local and county ordinances and state and federal laws.'

See Article III of this Report.

Section 18-027.E of the land division ordinance reads as follows:

'Each proposed subdivision plat or certified survey map shall be in compliance with the Town of Freedom Comprehensive Plan, Town Official Map, zoning ordinance, and all other local, county, state, and federal regulations.'

See Article III of this Report.

Section 18-050.G of the land division ordinance reads as follows:

Excessive Depth of Lots in relation to width shall be avoided and a proportion of two to one (2:1) shall be considered a desirable depth-to-width ratio under normal conditions. Depth of lots or parcels designated for commercial or industrial use shall be adequate to provide for off-street service and parking required by the use contemplated.

The proposed lot, as drawn, would have a depth-to-width ratio of roughly 4.2:1 and, as such would be **noncompliant** with Section 18-050.G of the land division ordinance.

V. CPC COMMENT¹

CPC recommends **denial** of the Concept for the reasons cited in Section IV of this Report.

¹ CPC recommendations are based upon professional staff review of application materials provided to CPC. CPC staff reports are authored by a municipal planner, not a licensed attorney, and do not constitute a legal opinion.

Exhibit 6c

Exhibit 1

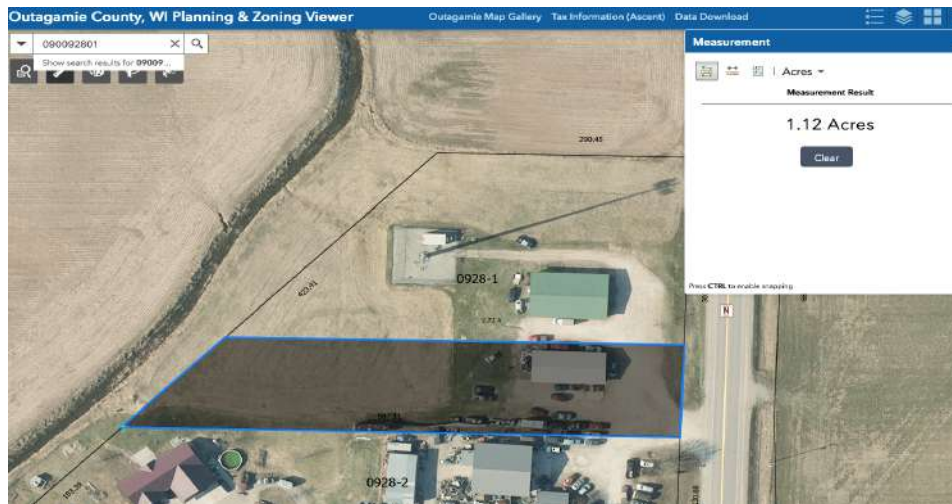


Exhibit 6d

Exhibit 2

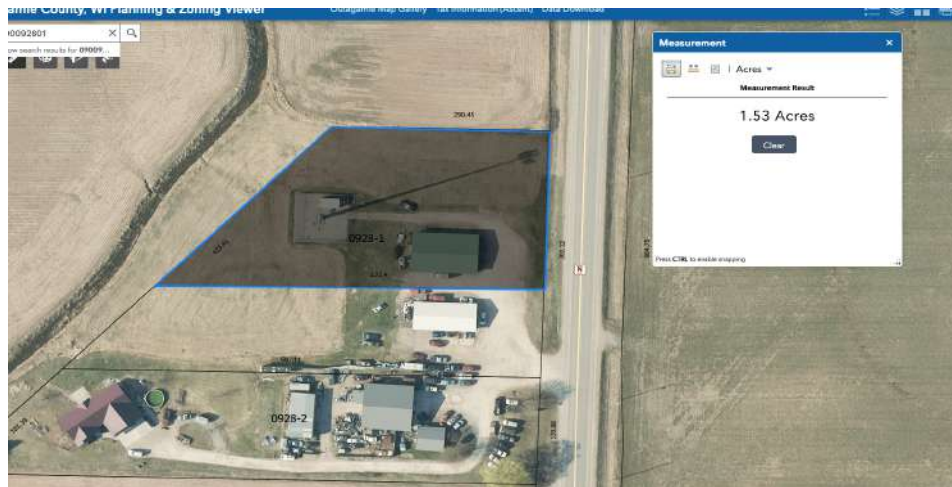
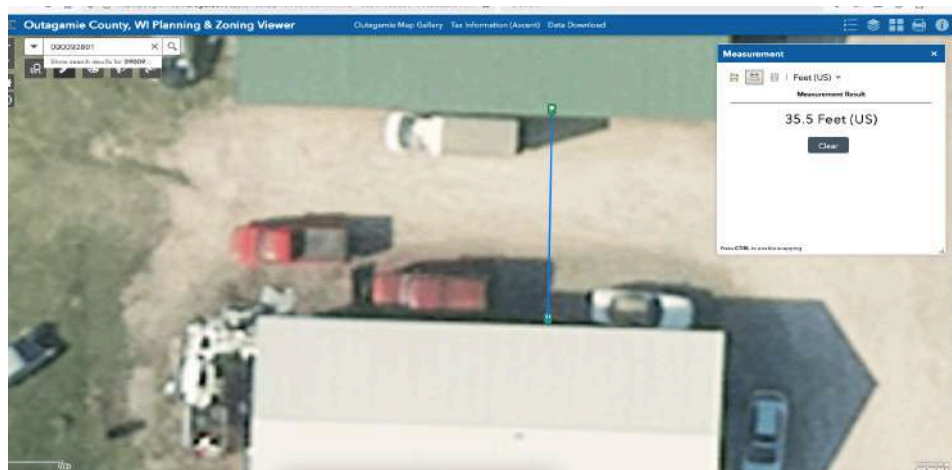


Exhibit 6e

Exhibit 3



2025 Building Permits

APP #	LAST NAME	FIRST NAME	PARCEL #	HOUSE #	STREET NAME	TYPE	EST. COST	TOTAL PAID	Park \$300	WI Seal Permit \$35	Eng/insp/ntng \$220	Admin \$50	Address \$100	ROW \$50	BUILDING INSPECTOR	DATE ISSUED
FR-25-1	VANDEHEY		090027905	N4354	BELL CT	ELECTRICAL	\$150	\$150							SP	1/7/2025
FR-25-2	Hinz	Daniel	090017501	N4392	French Rd	SOLAR	\$250	\$250							SP	1/7/2025
FR-25-3	CCW Properties		090210800	W1944	Industrial Dr	ELECTRICAL	\$250.00	\$250.00							SP	1/9/2025
FR-25-4	Toyne	Don	090207800	N4344	Kylea Ct	FINISH LL	\$510	\$510							SP	1/21/2025
FR-25-5	Leduc	Leann	090076500	W3092	Mathison Rd	HVAC	\$125	\$125							SF	1/27/2025
FR-25-6	VanCamp	Gerald	090028502	W2029	Center Valley Rd	NEW HOME	\$4,440.00								SP	1/29/2025
FR-25-7	Cotton		090065200	N3574	State HWY 55	ELECTRICAL	\$125	\$125							SF	2/5/2025
FR-25-8	Vanderloop	Tim	090094500	N2604	Cty HWY N	RAZE	\$150.00	\$150							SP	2/4/2025
FR-25-9	Wolff	Dylan	090009802	N4681	Cty Rd C	NEW HOME	\$2,665.00	\$2,265.00	\$300				\$100		SP	2/12/2025
FR-25-10	J&S		090061922	LOT 20	Warren Trl	NEW HOME	\$2,665.00	\$2,265.00	\$300				\$100		SP	2/21/2025
FR-25-11	Richeson	Shawn	090168300	N4295	Oak Ln	REMODEL/ADDITIO	\$1,200.00	\$1,200.00							SP	2/20/2025
FR-25-12	J&S		090061933	LOT 31	Ethan Dr	NEW HOME	\$2,665.00	\$2,265.00	\$300				\$100		SF	3/11/2025
FR-25-13	Residential Solutions		090061940	LOT 38	Gavin Dr	NEW HOME	\$4,840	\$4,440	\$300				\$100		SP	2/26/2025
FR-25-14	Residential Solutions		090061970	LOT 68	Gavin Dr	NEW HOME	\$2,665	\$2,265	\$300				\$100		SP	2/26/2025
FR-25-15	Keller	Chuck	090090502	W3130	Broadway Lot 104	HVAC	\$125								SP	2/27/2025
FR-25-16	Great Value Homes		090090502	W3130	Broadway Lot 205	NEW TRAILER	\$300	\$300							SP	2/27/2025
FR-25-17	Great Value Homes		090090502	W3130	Broadway Lot 61	NEW TRAILER	\$300	\$300							SP	3/5/2025
FR-25-18	Matuszak	Mark	090205200	N4345	Panoramic Ave	REMODEL/ADDITIO	\$875	\$875							SP	3/6/2025
FR-25-19	Pfrang	Trevor	090055906	W3332	Ash Lake Trl	PLUMBING	\$250	\$250							SP	3/10/2025
FR-25-20	Harjes	David				NEW HOME	\$2,665	\$2,265	\$300				\$100		SP	3/17/2025
FR-25-21	Cismoski	John	090172400	N3921	Dublin Way	FENCE	\$100	\$100							SP	3/14/2025
FR-25-22	VanAsten	Adam	090032900	W1560	VanAsten Rd	POOL	\$300								SP	3/14/2025
FR-25-23	Keller	Chuck	090055906	W3130	Broadway Lot 104	HVAC	\$125	\$125							SP	3/17/2025
FR-25-24	Woods	Cole	090093400	W2299	Greiner Rd	ELECTRICAL	\$125								SF	3/17/2025
FR-25-25	Herbst	Jeff	090061973	N3668	Gavin Dr	FENCE	\$100	\$100							SF	3/19/2025
FR-25-26	Verkullen	Greg	090048402			NEW HOME	\$2,665	\$2,265	\$300				\$100		SP	3/19/2025
FR-25-27	Bigge	Steve	090061915	W2321	Schmidt Rd	FENCE	\$100	\$100							SP	3/24/2025
FR-25-28																
FR-25-29	Buss	Randy	090651942	W2375	Ethan Dr	NEW HOME	\$250	\$250							SP	3/28/2025
FR-25-30	Mannebach	Patrick	090193500	W3526	Equestrian Trl	ELECTRICAL	\$125	\$125							SP	3/31/2025
FR-25-31	Moua	Shoua	090010303	N4773	French Rd	HVAC	\$125	\$50							SF	4/4/2025
FR-25-32	Wiessler	AJ	090028000	W1764	Elk Ln	EGRESS WINDOW	\$250	\$250							SP	4/8/2025
FR-25-33	Schuh	Rebecca	090151600	N3919	McHugh Rd	FENCE	\$100	\$100							SP	4/8/2025

I. POTENTIAL MATTERS REQUIRING TOWN ACTION

A. none

II. PENDING MATTERS REQUIRING PLAN COMMISSION ACTION

A. Bruce Gonnering CSM, CTH C – Submitted to Outagamie County, not yet submitted to Town

III. PENDING MATTERS REQUIRING TOWN BOARD ACTION

A. Bruce Gonnering CSM, CTH C – Submitted to Outagamie County, not yet submitted to Town

IV. OTHER PLANNING & ZONING MATTERS

none

V. ZONING RELATED LEGISLATION / COURT DECISIONS

A. January – February 2025

State ex rel. United States Cellular Operating Co. LLC v. Town of Fond du Lac, No. 2024AP85, 2025 WL 472421, (Wis. Ct. App. Feb. 12, 2025)

- Failure to follow ordinance requirement regarding decision notification procedures led to Court of Appeals overturning Town denial of CUP for mobile tower.

See recent rulings, attached

Certified Survey Map

Part of the Southwest ¼ of the fractional Northwest ¼, Section 4, T22N, R18E, Town of Freedom, Outagamie County, Wisconsin



North is referenced to the Wisconsin County Coordinate System, Outagamie County (NAD 1983/91 datum) based on the Wisconsin High Precision Geodetic Network (WHPGN)



DRAFTED BY:
Hebert Associates, Inc.
Land Surveying

1110 W. Wisconsin Ave.
Appleton, WI 54914

920-734-8373
Fax: 920-734-3968

SHEET #

FILE #



APA-WI Court Case Summaries

Opinions decided in January-February 2025 that affect planning in Wisconsin.

Wisconsin Court of Appeals

[State ex rel. United States Cellular Operating Co. LLC v. Town of Fond du Lac, No. 2024AP85, 2025 WL 472421, \(Wis. Ct. App. Feb. 12, 2025\)](#)

Summary

This is an interesting case because it deals with local authority over cell tower's siting and examines the law related to conditional use permits (CUPs).

Here, the local ordinances required a conditional use permit to allow the tower in the requested location. The applicant finalized its submission for a CUP on April 20, 2023, which triggered the statutory 90-day deadline for the town to complete its review and render a written decision. After multiple town board and plan commission meetings, the town denied the CUP application ostensibly based on state statutes and local code provisions. Specifically, the town determined that the requested tower was not “reasonably necessary for the public convenience at that location.”

After the denial, which took place on June 28, 2023, the town did not provide a written decision to the applicant, nor were the meeting minutes available until after the 90-day statutory deadline elapsed.

The cell tower company sued, arguing that because the 90-day deadline was not complied with, the CUP was legally deemed to be granted. The town argued that the applicant had actual notice of the denial because they attended the town board meeting at which the denial took place and were in regular communication with the town attorney after the denial. In other words, the town argued that it “substantially” complied with the 90-day statutory deadline.

The Court of Appeals rejected the town’s argument and held that the statute provided a rigid requirement that must be strictly adhered to for a local denial to take effect. Because that did not occur in this case, the court followed the statutory directive and ordered that the CUP be approved.

Key Takeaway

Take care to make sure all statutory requirements are followed even after contentious hearings take place and difficult decisions are made. After all the careful effort to ensure the law is followed during the process, double-check that all notice requirements after the process are also followed.

The APA-WI Court Case Summaries are brought to you by Chris Smith, Attorney, and Samuel Schultz, Urban Planner, of Von Briesen, in collaboration with the APA-WI VP of Policy and Advocacy, Lewis Kuhlman. If you have questions or concerns, please contact Sam Schultz, samuel.schultz@vonbriesen.com, or Lewis Kuhlman, kuhlmanl@cityoflacrosse.org.