



PREPARED FOR THE PLAN COMMISSION

Project Address: 3180 Burke Road, Town of Burke
Application Type: Certified Survey Map (CSM) in the Extraterritorial Jurisdiction
Legistar File ID # [74357](#)
Prepared By: Timothy M. Parks, Planning Division
Report includes comments from other City agencies, as noted

Summary

Applicant & Property Owner: Sandra L. Jensen; 2538 Leopold Way; Sun Prairie; Stacey Jensen, representative.
Surveyor: Mark Pynnonen, Birrenkott Surveying, Inc.; 1677 N Bristol Street; Sun Prairie.

Requested Action: Approval of a Certified Survey Map (CSM) to create three lots from land located at 3180 Burke Road, Town of Burke, in the City of Madison’s Extraterritorial Jurisdiction.

Proposal Summary: The applicant proposes to create three lots from the approximately 19.0-acre subject site. The CSM will be recorded as soon as all regulatory approvals have been granted.

Applicable Regulations & Standards: The subdivision process is outlined in Section 16.23(5)(b) of the Subdivision Regulations. In particular, the Plan Commission shall determine that the proposed subdivision complies with each of the following criteria for approval in the extraterritorial plat approval jurisdiction:

1. The proposed subdivision or land division shall be compatible with adjacent development patterns and shall maintain the general land development pattern of the area in question. Measures of compatibility shall consider lot sizes, traffic generation, access, noise and visual features.
2. The proposed subdivision or land division and the resulting development shall not demonstrably adversely affect the City’s ability to provide public services, install public improvements or accomplish future annexations. The Plan Commission may consider annexation agreements with the property owner in order to comply with this requirement. The Plan Commission may also consider whether the City and Town(s) have reached an agreement on necessary public improvements and public services facilities required to serve the development.

Review Required By: Plan Commission

Review Schedule: The State’s subdivision statute, Wis. Stats. Ch. 236, requires that action be taken on a Certified Survey Map within 90 days of submittal unless an extension is agreed to by the subdivider. If no action is taken within 90 days and no extension granted, the CSM is deemed approved. A completed application was received by the City on December 19, 2022. Therefore, the 90-day review period for this CSM will end circa March 18, 2023.

Summary Recommendation: The Planning Division recommends that the Plan Commission find that the criteria for extraterritorial land division are not met and **place on file without prejudice/reject** this request. If the Plan Commission finds that the criteria for approval are met, staff recommends that any approval be subject to input at the public hearing and the comments and conditions from reviewing agencies beginning on page 6 of this report.

Background Information

Parcel Location: Approximately 19.0-acre lot located on the north side of Burke Road opposite Nature Drive and approximately midway between Thorson Road and Bailey Road; Town of Burke.

Existing Conditions and Land Use: The subject site is developed with a one-story single-family residence in Dane County RR-8 (Rural Residential District) zoning.

Surrounding Land Uses and Zoning (all in the Town of Burke and subject to Dane County zoning):

North: Single-family residences and agricultural land south of Nelson Road, zoned RR-8 (Rural Residential District); RM-16 (Rural Mixed-Use District), and SFR-08 (Single-Family Residential Districts);

South: Single-family residences in the Burke Conservancy Estates subdivision across Burke Road, zoned SFR-08 and SFR-1 (Single-Family Residential Districts);

West: Single-family residences and agricultural land, zoned RR-2 (Rural Residential District) and RM-16;

East: Single-family residences and agricultural land in the Town of Sun Prairie (not subject to Dane County zoning).

Environmental Corridor Status: The subject site is not located in the Central Urban Service Area; there are no mapped environmental corridors affecting the site. There are no "Resource Protection Corridors" mapped by Dane County on the subject parcels.

Public Utilities and Services:

Water: Property is not served by municipal water.

Sewer: Property is not served by public sewer.

Fire protection: Sun Prairie Fire Department.

Emergency medical services: City of Madison Fire Department.

Police services: Dane County Sheriff's Department (North Precinct).

School District: Sun Prairie Area School District.

Project Description

The applicant and property owner, Sandra L. Jensen, is requesting approval of a Certified Survey Map (CSM) to divide an approximately 19-acre parcel located on the north side of Burke Road approximately midway between Thorson Road and Bailey Road in the Town of Burke into three lots. The site is also located across Burke Road Nature Drive, which provides access to the Burke Conservancy Estates subdivision to the south.

The subject property contains approximately 605 feet of frontage along Burke Road and is primarily agricultural in character save for a single-family residence located on the western edge of the property's road frontage. The subject site is among of series of parcels located along this section of Burke Road owned by members of the Jensen family. The lot to be divided was created by CSM 15092 on April 4, 2019 using a provision in the 2007 Town of Burke, Village of Deforest, City of Sun Prairie and City of Madison Cooperative Plan that allows the one-time division of a five-acre or larger parcel into not more than two lots for the purposes of constructing a single-family residence on each resulting lot without the approval of, in this case, the City of Madison. A stipulation in the cooperative plan requires that properties that qualify for this land division exemption had to exist as of March 1,

2006. The property that was divided in 2019 was previously part of a 2008 CSM, 12581, which reconfigured existing Jensen family parcels and was considered by the City to be a lot line adjustment that was not reviewed by the City of Madison as development pursuant to the cooperative plan or as a full extraterritorial land division. The 2008 CSM was determined to not preclude the ability for the Jensen family to use the exemption, which they did with the subsequent 2019 land division. Copies of the earlier CSMs are attached to the materials for the proposed land division.

The land division currently proposed calls for two 1.157-acre (50,400 square-foot) single-family lots to be created along the Burke Road frontage. Both lots – Lots 2 and 3 – will be approximately 176 feet wide and 286.6 feet deep. Lot 2 will adjoin the existing residence on the property, which will be located on proposed Lot 1. The remaining 16.6 acres of land will comprise the remainder of proposed Lot 1. Lots 2 and 3 have been designed to leave a 66-foot wide strip of proposed Lot 1 between them. The strip is located opposite the intersection of Nature Drive and Burke Road and was configured in response to a City staff concern raised early in the land division process that an earlier configuration of the lots could preclude a future extension of that street north of Burke Road to serve future development of the subject site and properties generally to the north. A second approximately 66-foot wide appendage of Lot 1 will extend south to Burke Road east of proposed Lot 3.

Approval of CSM by the Town of Burke and Dane County: Section 236.10(1)(b) of Wisconsin Statutes requires that subdivisions in the City’s Extraterritorial Plat Approval Jurisdiction receive approval from the town of record and county prior to consideration of the request by the Plan Commission.

Dane County granted conditional approval of the Certified Survey Map as outlined in a letter from Dan Everson, Land Division Review, Dane County Department of Planning and Development dated December 12, 2022. To facilitate the proposed land division, the proposed lots were rezoned to the RR-1 (Rural Residential) zoning district by the Dane County Board on November 3, 2022.

The Town of Burke approved the proposed land division and related rezoning on September 21, 2022.

Analysis and Conclusion

City of Madison Land Use Plans: The property is located outside of the areas currently covered by an adopted City of Madison neighborhood development plan.

The Peripheral Planning Areas Map in the 2018 Comprehensive Plan identifies lands generally east of the Nelson Neighborhood Development Plan, Felland Neighborhood Development Plan, and Northeast Neighborhoods Development Plan areas as part of Planning Area B (Group 1). The western part of Planning Area B is in the Town of Burke and will be attached to the City of Madison under the Burke Cooperative Plan. The lands in Burke in Planning Area B are located within the boundaries of the forthcoming Reiner Neighborhood Development Plan. Sanitary sewer service for the planning area would likely be provided by extensions of interceptors located in the Felland and Northeast neighborhoods. A draft of the Reiner Neighborhood Development Plan, which will contain detailed land use, transportation, utility, and implementation recommendations is under review now. Formal review and adoption of the plan by the Common Council is anticipated in 2023 following review by various City boards, committee, and commissions, including the Plan Commission. [Any information in the draft plan is for informational purposes only and should not be used in considering this or any land division that may be submitted prior to the plan’s formal adoption by the Common Council.]

Town of Burke Cooperative Plan: The proposed division of the subject site in the Town of Burke requires Plan Commission approval as both a land division in the City's extraterritorial jurisdiction, and as "development" as defined in the 2007 Town of Burke, Village of Deforest, City of Sun Prairie and City of Madison Cooperative Plan. Under the cooperative plan, the terms "develop" or "development" refer to the division of land, or construction of more than one principal structure on a parcel of land, or rezoning a parcel from a residential or agricultural classification to a non-residential classification. The cooperative plan includes an exception that allows for the one-time division of a five-acre or larger parcel into two lots for the purposes of constructing a single-family residence on each parcel without being considered development.

The subject site is not located within a Protected Area as defined by the cooperative plan (the Burke Conservancy Estates and the lands immediately north of the subject site are located in Protected Areas). Pursuant to the terms of the cooperative plan, the development of lands outside of the Protected Areas identified in the plan may require the development to provide a full range of urban services, including public water and sewer service, and to attach to the City of Madison, in the sole discretion of the City. In the case of the proposed land division, City water and sewer service are not currently proximate to the site or surrounding area, and the nearest properties in the City are located approximately three-quarters of a mile southwest of the site along Reiner Road south of Burke Road. As a result, City staff does not recommend that the property be attached to the City as a condition of this CSM approval.

Land Division Criteria: Any subdivision or land division in the extraterritorial jurisdiction shall be compatible with adjacent development patterns and shall maintain the general land development pattern of the area in question. Measures of compatibility shall consider lot sizes, traffic generation, access, noise and visual features. Also, the proposed subdivision or land division and the resulting development shall not demonstrably adversely affect the City's ability to provide public services, install public improvements or accomplish future annexations.

In reviewing the proposed land division, the Planning Division does not believe that the proposed lots reflect the general land development pattern of the surrounding area. With the exception of the smaller lots in the Burke Conservancy Estates subdivision south of Burke Road (platted in 2000), most of the section of Burke Road between Thorson and Bailey Roads in both the Town of Burke and Town of Sun Prairie consists of larger agricultural parcels interspersed with small residential lots, most of which were divided from the adjacent agricultural lands. Staff believes that maintaining "the general land development pattern of the area in question" relies on the pre-existence of lots of a similar character to the ones proposed by the subdivision or land division, rather than the creation of a pattern. While staff acknowledges the presence of the more conventional residential development to the south, it does not feel that the proposed lots reflect a continuation of that lot pattern. Rather, Lots 2 and 3 represent the creation of a development pattern.

Additionally, staff believes that the creation of smaller lots from larger parcels such as the ones proposed could adversely affect the City's ability to provide public services, install public improvements, and accomplish future attachments (annexations) counter to extraterritorial approval criteria 2. As noted above, the subject site is located within the boundaries of the forthcoming Reiner Neighborhood Development Plan, which will include detailed recommendations for the future street network, utility extensions, and land uses for the area surrounding the property. Staff is concerned that the division of the subject parcel could impede the ability to create the connections and utility corridors typically recommended in neighborhood development plans, which are necessary to support the fine-grained urban development pattern typically desired by the City. While staff acknowledges that urban development of the subject site in the City on City water and sewer is an indeterminate number of years into the future given that utilities to serve such development are still located well west and south

of the site, we feel that it is important to preserve larger developable parcels whenever possible and allow land divisions only if they reflect an existing development pattern and will not demonstrably impact future development.

However, in the event that the Plan Commission believes that the proposed land division can meet the criteria for approval, staff recommends that the CSM be revised to establish 66-foot wide reservation on proposed Lot 1 where that lot extends south to Burke Road opposite Nature Drive between proposed Lots 2 and 3. While the forthcoming Reiner plan will formally recommend a detailed street network to guide the future development of the area, staff often uses an existing street network as the framework for the street network to serve a larger planning area. Although the Reiner plan is still a draft, concepts for future development in the plan suggest an extension of Nature Drive across Burke Road, and even in the absence of a plan, staff feels that future urban development would be best served by extending a street from an existing intersection whenever possible versus off-set intersections or development with limited access. In addition to reserving land that could be dedicated/acquired and improved in the future as public streets if called for in the forthcoming plan, the reservation will also provide a corridor for future utility extensions that may be needed to facilitate urban development of the subject site and surrounding properties. Similar to a reservation on the City's Official Map, the construction of principal or accessory buildings in the reserved area would purposefully be limited and require approval by the Director of the Planning Division or his/her designee to ensure that any such improvements do not interfere with future plan implementation or utility extensions. Conditions reserving the 66-foot strip opposite Nature Drive and restricting construction on Lot 1 would lessen the impact of the proposed land division could have on future planning for and implementation of the finer-grained development pattern likely to be recommended in the Reiner Neighborhood Development Plan.

Conclusion

The Planning Division does not believe that the proposed land division meets the criteria for approval. The proposed lots are inconsistent with the general land development pattern along this portion of Burke Road. Staff is also concerned that the proposed land division will negatively impact the City of Madison's ability to extend services to this area in the future and accomplish future attachments in direct contradiction to the extraterritorial approval criteria.

However, in the event that the Plan Commission believes that the extraterritorial approval criteria can be met, it recommends that the Certified Survey Map include a reservation on Lot 1 over the 66-foot wide strip between Lots 2 and 3 to preserve the opportunity for Nature Drive to be extended north of Burke Road. The CSM should also include a note that will restrict future construction on Lot 1 without written approval by the City of Madison.

Recommendation

The Planning Division recommends that the Plan Commission find that the criteria for extraterritorial land division are not met and **place on file without prejudice/reject** the proposed Certified Survey Map of land located at 3180 Burke Road, Town of Burke.

If the Plan Commission finds that the criteria for approval are met, staff recommends that any approval be subject to input at the public hearing and the following conditions:

Recommended Conditions of Approval Major/Non-Standard Conditions are Shaded

Planning Division (Contact Timothy M. Parks, (608) 261-9632)

1. The Certified Survey Map shall be revised prior to final City approval to establish a 66-foot wide reservation for future public street right of way over a portion of Lot 1 for the extension of Nature Drive. No permits for principal or accessory buildings shall be granted within the reserved area unless approved by the Director of the City of Madison Planning Division or his/her designee. The final alignment of the reservation and governing text shall be approved by the Planning Division prior to final approval and recording of the CSM. The reservation may only be released or waived in writing by the City of Madison Planning Division or Plan Commission.
2. Detail the location of the existing building (setbacks, etc.) and note the location of the well serving the property.

City Engineering Division (Contact Brenda Stanley, (608) 261-9127)

This agency submitted a response with no comments or conditions for this request.

City Engineering Division – Mapping Section (Contact Julius Smith, (608) 264-9276)

3. Add CSM 15092 to the Lot 1 label on the westerly side of the parcel. Also, label Burke Conservancy Estates subdivision south of Burke Road.
4. Wisconsin Administrative Code A-E 7.08 identifies when Public Land System (PLS) tie sheets must be filed with the Dane County Surveyor's office. The developer's surveyor and/or applicant must submit copies of required tie sheets or monument condition reports for all monuments, including center of sections of record, used in this survey, to Jeff Quamme, City Engineering (jrquamme@cityofmadison.com). If a new tie sheet is not required under A-E 7.08, Engineering requests a copy of the latest tie sheet on record with Dane County Surveyor's office and shall be attached to a signed and sealed monument condition report.
5. In accordance with Section s. 236.18(8), Wisconsin Statutes, the applicant shall reference City of Madison WCCS Dane Zone, 1997 Coordinates on all PLS corners on the Certified Survey Map in areas where this control exists. The surveyor shall identify any deviation from City Master Control with recorded and measured designations. Visit the Dane County Surveyor's Office for more information.
6. Prior to City Engineering final sign-off by main office for Certified Survey Maps (CSM), the final CSM must be submitted to Engineering Division Surveyor/ Land Records Coordinator for final technical review and approval. This submittal must occur a minimum of two working days prior to final Engineering Division sign-off. E-mail submittal of the **final** CSM in PDF form is preferred. Transmit to Julius Smith (jsmith4@cityofmadison.com).
7. Show the "recorded as" distance along the northerly most segment of westerly side Lot 1 as (447.59') if this parcel was actually measured and surveyed as such and revise the overall area and area of Lot 1. Otherwise correct the distance to 447.59' as it produces better closure and using this distance matches areas shown for overall and Lot 1.
8. The sub-distances along the south line of the CSM do not total to the overall 604.35; they sum to 604.36'; make an adjustment as needed.

9. Detail the location of the existing building.
10. The applicant shall submit to Julius Smith, prior to final Engineering sign-off of the subject CSM, one (1) digital CADD drawing in a format compatible with AutoCAD. The digital CADD file(s) shall be referenced to the Dane County Coordinate System and shall contain, at minimum, the list of items stated below, each on a separate layer/level name. The line work shall be void of gaps and overlaps and match the final recorded CSM: right of way lines (public and private); lot lines; lot numbers; lot/plat dimensions; street names, and; easement lines (including wetland and floodplain boundaries).

*This transmittal is a separate requirement than the required submittals to Engineering Streets Section for design purposes. The Developer/Surveyor shall submit new updated final plat, electronic data and a written notification to Engineering Mapping for any changes to the plat which occur subsequent to any submittal.

Traffic Engineering Division (Contact Sean Malloy, (608) 266-5987)

This agency submitted a response with no comments or conditions for this request.

Zoning Administrator (Contact Jenny Kirchgatter, (608) 266-4429)

This agency submitted a response with no comments or conditions for this request.

Fire Department (Contact Bill Sullivan, (608) 261-9658)

This agency submitted a response with no comments or conditions for this request.

Water Utility (Contact Jeff Belshaw, (608) 261-9835)

11. The subject parcels are located beyond Madison Water Utility's existing service area. Note that future attachment to the City may require connection to the City water system, if/when water service becomes available per MGO Section 13.07.

Office of Real Estate Services (Andy Miller, (608) 261-9983)

12. Prior to approval sign-off by the Office of Real Estate Services ("ORES"), the Owner's Certificate(s) on the CSM shall be executed by all parties of interest having the legal authority to do so, pursuant to Wis. Stats. 236.21(2)(a). Said parties shall provide documentation of legal signing authority to the notary or authentication attorney at the time of execution. The title of each certificate shall be consistent with the ownership interest(s) reported in the most recent title report. When possible, the executed original hard stock recordable CSM shall be presented at the time of ORES approval sign-off. If not, the City and the Register of Deeds are now accepting electronic signatures. A PDF of the CSM containing electronic signatures shall be provided to ORES to obtain approval sign-off.
13. Prior to CSM approval sign-off, an executed and notarized or authenticated certificate of consent for all mortgagees/vendors shall be included following the Owner's Certificate(s). If a mortgage or other financial instrument is reported in record title, but has been satisfied or no longer encumbers the lands or ownership within the CSM boundary, a copy of a recorded satisfaction or release document for said instrument shall be provided prior to CSM approval sign-off.

14. All ownership consents and certifications for the subject lands shall conform to Wis. Stats. 236.21(2) and 236.29 by including the language ...surveyed, divided, mapped and dedicated...
15. If any portion of the lands within the CSM boundary are subject to an Option to Purchase or other Option interest, include a Certificate of Consent for the option holder and have it executed prior to CSM sign-off if said ownership interest meets the criteria set forth by Wis. Stats. Sec. 236.34 and Sec. 236.21(2)(a).
16. A Consent of Lessee certificate shall be included on the CSM for all tenant interests in excess of one year, recorded or unrecorded, and executed prior to CSM sign-off.
17. The 2022 real estate taxes are paid for the subject property. Per 236.21(3) Wis. Stats. and 16.23(5)(g)(1) Madison General Ordinances, the property owner shall pay all real estate taxes that are accrued or delinquent for the subject property prior to CSM recording.
18. As of January 12, 2023, there are no special assessments reported. If special assessments are levied against the property during the review period and prior to CSM approval sign-off, they shall be paid in full pursuant to MGO Section 16.23(5)(g)1.
19. Pursuant to MGO Section 16.23(5)(g)(4), the owner shall furnish an updated title report via email to Andy Miller in the ORES (acmilller@cityofmadison.com), as well as the survey firm preparing the proposed CSM. The report shall search the period subsequent to the initial title report, dated November 3, 2022, submitted with the CSM application and include all associated documents that have been recorded since the initial title report. A title commitment may be provided, but will be considered only as supplementary information to the title report update. The surveyor shall update the CSM with the most recent information reported in the title update. ORES reserves the right to impose additional conditions of approval in the event the title update contains changes that warrant revisions to the CSM.
20. The owner shall email the document number of the recorded CSM to Andy Miller at the City's Office of Real Estate Services at acmilller@cityofmadison.com as soon as the recording information is available.
21. Depict and dimension all existing improvements including, but not limited to: buildings, drives, parking lots, encroachments, wells, septic systems, etc. located within the CSM boundary.
22. For properties not connected to municipal utility services, consider whether or not well abandonment ref. NR-141 needs to be addressed.