



PREPARED FOR THE PLAN COMMISSION

Project Address: 10252 Mineral Point Road
Application Type: Certified Survey Map Referral
Legistar File ID # [81564](#)
Prepared By: Timothy M. Parks, Planning Division
Report includes comments from other City agencies, as noted

Summary

Applicant: Ryan McMurtrie, United Herrling Land, LLC; 660 W. Ridgeview Drive; Appleton.

Surveyor: Grady Gosser, Trio Engineering; 4100 N Calhoun Road, Suite 300; Brookfield.

Requested Actions: Approving a Certified Survey Map (CSM) of 10252 Mineral Point Road to create three outlots for future development.

Proposal Summary & Review Schedule: The applicant is seeking approval of a CSM to create three outlots for future development, which the letter of intent suggests is to facilitate a financial transaction. By statute, no development may occur on the outlots until they are further divided into lots, in this case, consistent with the preliminary plat of *Herrling Property Subdivision*, first approved in June 2019.

The applicant had submitted for re-approval of the *Herrling Property Subdivision* preliminary plat concurrent with the proposed CSM. However, an error providing the mailed notices to property owners within 200 feet of the overall subdivision at least ten (10) days prior to the March 11 Plan Commission as required by MGO Section 16.23(4) caused the preliminary plat to be referred to the March 25 meeting with the consent of the subdivider.

The State’s subdivision statute, Wis. Stats. 236, requires that a preliminary plat and Certified Survey Map be approved, conditionally approved, or rejected (with stated reasons) within 90 days of submittal unless the time is extended by agreement with the applicant. If no action is taken within 90 days and no extension granted, the plat or CSM are deemed approved. The proposed preliminary plat and land division applications were submitted to the City for the January 8, 2024 application deadline. Therefore, the 90-day review period for those requests is scheduled to expire circa April 7, 2024.

The applicant allowed for the preliminary plat to be referred to March 25 to address the noticing issue; the March 25 meeting corresponds with the April 16 Common Council meeting, which is beyond the 90-day window allowed in statutes. However, the applicant requested that the CSM proceed on the March 11 agenda (March 19 Common Council meeting) due to time constraints related to a financial transaction. In order to review the CSM, the 2019 preliminary plat will be used for reference.

Applicable Regulations & Standards: The subdivision process is outlined in Section 16.23(4) of the Subdivision Regulations.

Review Required By: Plan Commission and Common Council.

Summary Recommendation: The Planning Division recommends that the Plan Commission forward the three-outlot Certified Survey Map of 10252 Mineral Point Road to the Common Council with a recommendation of

approval, subject to input at the public hearing and the conditions from reviewing agencies beginning on page 6 of this report.

Background Information

Parcel Location: Approximately 84.9 acres of land located on the north side of Mineral Point Road, approximately a quarter-mile east of Pioneer Road; Alder District 9 (Conklin); Middleton-Cross Plains Area School District. The larger Herrling/Westwind subdivision comprises 139.8 acres, including lands west of the subject site.

Existing Conditions and Land Use: Most of the site is undeveloped agricultural land, zoned SR-C2 (Suburban Residential–Consistent 2 District), SR-C3 (Suburban Residential–Consistent 3 District), SR-V2 (Suburban Residential–Varied 2 District), TR-V2 (Traditional Residential–Varied 2 District), or TR-U1 (Traditional Residential–Urban 1 District) consistent with 2019 zoning approvals.

Surrounding Land Use and Zoning:

North: Existing and future single-family residences in the Eagle Trace subdivision, zoned TR-C3 (Traditional Residential–Consistent 3 District);

South: Grand Arbor Reserve Apartments, zoned TR-U1 (Traditional Residential–Urban 1 District) and single-family residences in the Birchwood Point subdivision in the City, zoned TR-C3; single-family residences on large parcels on the south side of Mineral Point Road east of Sugar Maple Lane in the Town of Middleton;

East: Undeveloped land, zoned A (Agricultural District);

West: Single-family residences in the Spruce Hollow subdivision and West Middleton Lutheran Church across Pioneer Road; single-family residence and agricultural land on the east side of Pioneer Road; West Middleton Lutheran Church cemetery on a one-acre parcel located at the northeastern corner of Mineral Point and Pioneer Roads, all in the Town of Middleton. The western edge of the site is also bounded by the first phase of the Westwind single-family subdivision in the City of Madison, which was platted in 2023 in SR-C1 (Suburban Residential–Consistent 1 District) zoning.

Adopted Land Use Plan: The 2018 [Elderberry Neighborhood Development Plan](#) recommends a range of residential uses for the subject site. A large area of Residential Housing Mix 3 (HM3) is recommended to surround a public park in the southeastern quadrant of the site. Development in HM3 is recommended between 20-40 units per acre. The HM3 district is surrounded on the north and west by a smaller area of Residential Housing Mix 2 (HM2), which is generally recommended for development between 8-20 units per acre. The remainder of the subject property is recommended for Residential Housing Mix 1 (HM1), including adjacent to the Eagle Trace subdivision to the north. In general, development in HM1 is recommended not to exceed eight units per acre.

The site is recommended in the 2023 [Comprehensive Plan](#) for a mix of Low Residential (density up to 15 units per acre), Low-Medium Residential (7-30 units per acre), Medium Residential (20-90 units per acre), and Park and Open Space consistent with the land use polygons in the Elderberry Neighborhood Development Plan.

Environmental Corridor Status: The environmental corridor map shows the general location of the stormwater management and parkland parcels planned for the subject site within mapped environmental corridor. The mapped corridors will be further defined once the proposed outlots are further subdivided and developed in the future.

Public Utilities and Services: The site will be served by a full range of urban services as it develops. However, Metro Transit does not currently provide service west of Pleasant View Road. Per Metro’s comments: “The proposed development is outside Metro Transit's paratransit service area. The closest bus stop with scheduled bus service is over 1.75 miles walking distance, and the parcels would be greater than the three-quarters of a mile regulatory distance from all day scheduled service for passengers who might be eligible for door-to-door paratransit service.”

Zoning Summary: The proposed outlots will need to be further subdivided into lots prior to development. Per the Zoning Code and Subdivision Regulations, outlots are not subject to zoning district bulk requirements.

Other Critical Zoning Items	
Yes:	Utility Easements (to be established with final plat)
No:	Urban Design, Wellhead Protection, Floodplain, Landmarks, Waterfront Development, Adjacent to Parkland
Prepared by: Tim Parks, Planning Division, and Jenny Kirchgatter, Assistant Zoning Administrator	

Previous Approvals

The overall Herrling property was attached to the City of Madison from the Town of Middleton in December 2018.

On June 11, 2019, the Common Council approved a request to rezone approximately 141.8 acres of land generally addressed as 10250 Mineral Point Road from Temp. A (Agricultural District) to SR-C2 (Suburban Residential–Consistent 2 District), SR-V2 (Suburban Residential–Varied 2 District), TR-V2 (Traditional Residential–Varied 2 District), TR-U1 (Traditional Residential–Urban 1 District), and PR (Parks and Recreation District); and approved the preliminary plat of *Herrling Property Subdivision*, creating 129 lots for single-family detached residences, seven lots for future townhouse/rowhouse development, ten lots for the future apartment development, one outlot to be dedicated to the public for parkland, and 11 outlots for public stormwater management.

On April 22, 2020, a Certified Survey Map to create two outlots for future development from the 141.8-acre Herrling property was administratively approved by the Secretary of the Plan Commission. The Common Council approved a resolution for the CSM on April 21, 2020. Approval of the two-outlot CSM was conditioned on the outlots being subdivided and developed in accordance with the preliminary plat of *Herrling Property Subdivision* and any conditions of its approval, including all dedications to the public required to serve the future development. The land division was recorded as CSM 15568 on December 23, 2020.

On August 3, 2021, the Common Council approved the final plat of *Westwind*, creating 70 single-family lots, four outlots dedicated to the public for stormwater management, and one outlot for future development on land generally addressed as 10554 Mineral Point Road (the western half of the Herrling preliminary plat). The final plat was re-approved by the Common Council on November 22, 2022; the final plat was recorded on May 8, 2023.

Project Description

The applicant, United Financial Group, is requesting approval of a Certified Survey Map (CSM) to divide 84.9 acres at 10252 Mineral Point Road into three outlots to facilitate a financial transaction in anticipation of future residential development. The subject property represents the eastern approximately half of the *Herrling Property Subdivision*, which was approved in 2019 to guide development of approximately 140 acres of land in the

northeastern quadrant of Mineral Point Road and Pioneer Road with a variety of residential uses. The western portion of the *Herrling* preliminary plat is currently under development as the Westwind single-family subdivision, while the eastern portion comprising the site of the proposed land division is undeveloped agricultural land.

The three outlots proposed by the applicant vary considerably by size and shape. Outlot 1 is proposed as a 62.7-acre parcel that occupies most of the eastern three-quarters of the 84.9-acre subject site. Outlot 2 will be a 21.65-acre parcel that extends along the western edge of the overall parcel, with a portion that wraps the southwestern corner of the site along Mineral Point Road. The boundary between Outlots 1 and 2 is roughly formed by the limits of a 30-foot public easement for the West Elderberry public sanitary interceptor sewer that serves the Westwind subdivision to the west and development north of the Herrling property and will serve the subject site once it is further subdivided. Outlot 3 of the proposed CSM will be a landlocked 0.57-acre parcel in the northeastern corner of the overall property adjacent to the Eagle Trace subdivision.

Analysis & Conclusion

The Subdivision Regulations in MGO Section 16.23 define an “outlot” as:

“Any parcel in a plat or certified survey map that is not designated as a lot. Outlots shall be used to designate areas to be dedicated to the public for a designated public use or uses on the face of the plat or land division, but shall not include land dedicated for public streets or alleys. Outlots shall include any land set aside for private roads, privately maintained right-of-way islands, areas for future development, and all other non-buildable parcels retained by the developer or lot owners. An outlot may not be used as a building site for private residential, manufacturing and commercial uses.”

The City’s definition of outlot follows the general definition and regulations of outlots in Chapter 236 of Wisconsin Statutes, which generally suggest that development occurs on lots, and generally not on outlots. MGO Section 16.23(6)(d)12 also states that outlots may be of any size and shape, and do not need access to a public street (such as with proposed Outlot 3). Outlots may be sold and/or built upon if they meet size and access requirements, and any restrictions on the outlot have been released. Outlots may be dedicated to the public, and the construction of improvements and facilities for public benefit are allowed on an outlot dedicated to the public.

The Herrling preliminary plat was approved in 2019. Both Section 236.12 of Wisconsin Statutes and MGO Section 16.23 both afford 36 months from the date of final approval of a preliminary plat for the subdivision to be final platted. If not, a final plat or CSM submitted beyond 36 months is not entitled to approval even if it substantially conforms to the approved preliminary plat. The applicant submitted for re-approval of the *Herrling Property Subdivision* preliminary plat concurrent with the proposed CSM. However, an error providing the mailed notices to property owners within 200 feet of the overall subdivision at least ten (10) days prior to the March 11 Plan Commission as required by MGO Section 16.23(4) caused the preliminary plat to be moved to the March 25 meeting with the consent of the subdivider.

Wis. Stats. Chapter 236, requires that preliminary plats and Certified Survey Maps be approved, conditionally approved, or rejected (with stated reasons) within 90 days of submittal unless the time is extended by agreement with the applicant. If no action is taken within 90 days and no extension granted, the plat or CSM are deemed approved. The proposed preliminary plat and land division applications were submitted to the City for the January 8, 2024 application deadline. Therefore, the 90-day review period for those requests is scheduled to expire circa April 7, 2024.

The applicant allowed for the preliminary plat to be referred to March 25 to address the noticing issue; the March 25 meeting corresponds with the April 16 Common Council meeting, which is beyond the 90-day window allowed in statutes. However, the applicant requested that the CSM proceed on the March 11 agenda (March 19 Common Council meeting) due to time constraints related to a financial transaction.

In order to review the CSM, the 2019 preliminary plat was used for reference. However, while not before the Plan Commission on March 11, the preliminary plat to be reviewed on March 25 hews closely to the 2019 version. Staff anticipates that the preliminary plat will likely be re-approved without significant changes to the future lots and development pattern, though staff anticipates that minor adjustments to street rights of way will be needed to bring the undeveloped portions of the Herrling property into conformance with the Complete Green Streets Guide adopted in December 2022 subsequent to the initial preliminary plat approval. Staff believes that the proposed CSM will not impede future development of the subject site consistent with the 2019 plan for the property or the forthcoming preliminary plat.

The proposed CSM was submitted with an exhibit that shows how the proposed outlots generally follow the layout of the *Herrling Property Subdivision* preliminary plat; the exhibit is attached to the legislative file for the land division for reference. The proposed CSM also includes the following note on page 1:

“Outlots within this Certified Survey Map are prohibited from further development until they are further subdivided and developed in substantial compliance to the preliminary plat conditionally approved by Resolution RES-19-00454 File ID 55182, adopted June 11, 2019 by the Madison Common Council or any subsequent City of Madison approved preliminary plat and final plat or Certified Survey Map.”

The note is effectively the same as a note included on CSM 15568, when the larger 140-acre site was split into two outlots to facilitate development of the Westwind subdivision by a separate development group. In conjunction with the limits on outlots in statutes and MGO Section 16.23, staff feels that the note on the proposed CSM will ensure to the extent possible that the proposed outlots will implement the approved Herrling subdivision, which was previously found to be generally consistent with the 2018 [Elderberry Neighborhood Development Plan](#). It is expected that whenever the three proposed outlots are further subdivided and developed that they will follow the development pattern approved with the preliminary plat and will construct all of the public improvements needed to serve that future development. Additionally, the City Engineering Division is recommending that the applicant be required to enter into a future phase developer’s agreement for all required improvements required by the preliminary plat of *Herrling Property Subdivision* as a condition of recording of the proposed CSM.

Recommendation

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

The Planning Division recommends that the Plan Commission forward the three-outlot Certified Survey Map of 10252 Mineral Point Road to the Common Council with a recommendation of **approval**, subject to input at the public hearing and the conditions that follow.

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

Planning Division

1. Note: No buildings may be constructed on the proposed outlots without further subdivision of those outlots into lots and any land use approvals required by the Zoning Code. Future subdivision and development of the proposed outlots shall be consistent with the land use and street plan in the 2018 Elderberry Neighborhood Development Plan, and with any preliminary plat that may be approved by the Plan Commission and Common Council subsequently. Any restrictions on the outlots shall be released prior to their future development.

The following conditions of approval have been submitted by reviewing agencies:

City Engineering Division (Contact Tim Troester, (608) 267-1995)

2. The applicant is aware that there is a need for additional stormwater detention at the southern portions of this CSM. Further, at the time of platting, a dedicated greenway shall be provided for the drainage moving north to south through the site. At the time of platting, the applicant shall work with the City Engineering Division to dedicate and transfer by a purchase agreement the additional lands required for stormwater detention.
3. Enter into future phase developer's agreement for all required improvements as required by the preliminary plat of *Herrling Property Subdivision*.
4. This development is subject to review fees from both Capital Area Regional Plan Commission (CARPC) and Madison Metropolitan Sewerage District (MMSD). Those fees have been prepaid by the City of Madison as a condition of bring this area into the Central Urban Service Area (CUSA). The proportional share of those fees shall be charged to this development prior to approval.
5. The applicant shall enter into a City/ Developer agreement for the required infrastructure improvements to be executed prior to sign off. Allow 4-6 weeks to obtain agreement. Contact the City Engineering Division to schedule the development and approval of the plans and the agreement.
6. The developer shall construct public sanitary sewer, storm sewer, and drainage improvements as necessary to serve the lots within the plat/ CSM.
7. This development is subject to impact fees for the West Elderberry Sanitary Sewer Improvement Impact Fee District. All impact fees are due and payable at the time building permits are issued. The following note shall put on the face of the plans: "Lots/ buildings within this development are subject to impact fees that are due and payable at the time building permit(s) are issued."
8. All outstanding Madison Metropolitan Sewerage District (MMSD) charges are due and payable prior to City Engineering Division sign-off, unless otherwise collected with a Developer's/ Subdivision Contract. Contact Mark Moder (261-9250) to obtain the final MMSD billing a minimum of two (2) working days prior to requesting City Engineering signoff.

9. A minimum of two (2) working days prior to requesting City Engineering Division sign-off on the CSM, contact either Tim Troester (West) at (608) 261-1995 (ttroester@cityofmadison.com) or Brenda Stanley (East) at (608) 261-9127 (bstanley@cityofmadison.com) to obtain the final stormwater utility charges that are due and payable prior to sub-division of the properties. The stormwater utility charges (as all utility charges) are due for the previous months of service and must be cleared prior to the land division (and subsequent obsolesces of the existing parcel).

City Engineering Division – Mapping Section (Contact Jeff Quamme, (608) 266-4097)

10. Add a note that lands within this Certified Survey Map are subject to the Declaration of Conditions, Covenants and Restrictions per Document No. 5678222.
11. The Traffic Engineering Division has provided updated requirements for street right of way widths due to the Complete Green Streets guide and policy. The CSM may require updates of the outlot boundaries with the revised street width requirements and any associated changes on the preliminary plat. Note if Blue Indigo Street is required to be widened, the existing public street easement shall be amended to accommodate any required additional width.
12. Add a note that lands within this Certified Survey Map are subject to Declaration of Conditions, Covenants and Restrictions Pertaining to Stormwater Facilities per Document No. 5756921.
13. Add a note that lands within this Certified Survey Map are subject to Cooperation Agreement per Document No. 5756922.
14. Add a note that lands within this Certified Survey Map are subject to Agreement Regarding Easements and Responsibility for Installation, Maintenance and Repair Costs Agreement per Document No. 5901028.
15. 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 (with current tie sheet attached) for all monuments, including center of sections of record, used in this survey, to Jeff Quamme, City Engineering (jrquamme@cityofmadison.com).
16. Prior to City Engineering Division final sign-off by main office for plats or Certified Survey Maps (CSM), the final Plat or CSM must be submitted by email in PDF format transmittal to Engineering Land Records Coordinator Jeff Quamme (jrquamme@cityofmadison.com) for final technical review and approval. This submittal must occur a minimum of two working days prior to final City Engineering Division sign-off
17. Revise the note on sheet one to include in the text "as reapproved by Resolution RES-24-_____, File ID _____, adopted on _____, 2024. The approval information shall be populated prior to recording the Certified Survey Map.
18. Correct the street name of Lush Woods Place to the official street name of Lush Woods Trail. Correct the street name of Sugar Maple Lane to N Sugar Maple Ln.
19. 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.

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

This agency has reviewed this request and recommended no conditions of approval.

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

This agency has reviewed this request and recommended no conditions of approval.

Parking Division (Contact Trent W. Schultz, (608) 246-5806)

The agency reviewed this project and determined a Transportation Demand Management (TDM) Plan is not required at this time. As development progresses in the subdivision, residential uses with 10 or more dwelling units and other applicable uses in MGO Section 16.03 will be subject to TDM Plan review.

Fire Department (Contact Matt Hamilton, (608) 266-4457)

This agency has reviewed this request and recommended no conditions of approval.

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

This agency has reviewed this request and recommended no conditions of approval.

Metro Transit (Contact Tim Sobota, (608) 261-4289)

This agency did not provide conditions of approval for this request.

Parks Division (Contact Ann Freiwald, (608) 243-2848)

20. Park Impact Fees (comprised of the Park-Infrastructure Impact Fee, per MGO Section 20.08(2), and Park-Land Impact Fees, per MGO Section 16.23(8)(f) and 20.08(6)) will be required for all new residential development associated with this project. This development is within the West Park-Infrastructure Impact Fee district. Please reference ID# 24003 when contacting Parks Division staff about this project.

21. The following note should be included on the CSM: "Lots within this land division are subject to impact fees that are due and payable at the time building permit(s) are issued." The Parks Division shall be required to sign off on this CSM.

Forestry Section (Brandon Sly, (608) 266-4816)

This agency has reviewed this request and recommended no conditions of approval.

Office of Real Estate Services (Lance Vest, (608) 245-5794)

22. 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.
23. 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).
24. 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...”
25. Revise the Plan Commission certificate to change “Planning” to “Plan”.
26. As of March 1, 2024, the 2023 real estate taxes are paid for the subject property. Under 236.21(3) Wis. Stats. and MGO Section 16.23(4)(f), the property owner shall pay all real estate that are accrued or delinquent for all parcels within the plat boundary prior to recording. This includes property tax bills for the prior year that are distributed at the beginning of the year. Receipts are to be provided on or before sign-off; checks are payable to: City of Madison Treasurer; 210 Martin Luther King, Jr. Blvd.; Madison, WI 53701.
27. As of March 1, 2024, there are no special assessments reported. All known special assessments are due and payable prior to CSM approval sign-off. 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(4)(f).
28. Pursuant to MGO Section 16.23(5)(g)(4), the owner shall furnish an updated title report to the Office of Real Estate Services via email to Lance Vest (lvest@cityofmadison.com), as well as the survey firm preparing the proposed CSM. The report shall search the period subsequent to the date of the initial title report (December 29, 2023) 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.
29. The following revisions shall be made on the final plat prior to final approval and recording: Create notes that define the purpose of and the ownership of (whether public or private) all outlots. The note for an outlot dedicated to the public shall say: “Dedicated to the public for _____ purposes.”