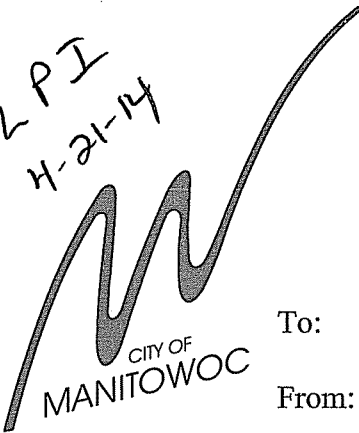


LPI
4-21-14

14-877

April 21, 2014



CITY OF
MANITOWOC

David Less
City Planner

To: Mayor and Common Council
From: Manitowoc City Plan Commission
Subject: **PC13-2014: JHA Properties, LLC; Request for Exception to 2,500' Separation Requirement Pursuant to Wis. Stat. § 62.23(7)(i)1. for Establishment of an 8-person Community Based Residential Facility (CBRF) at 2213 Paul Road**

Dear Mayor and Common Council:

At the regular April 16, 2014 meeting of the Manitowoc City Plan Commission, the Commission held a public informational hearing regarding a request from Tim Frey as President of TLC Homes, Inc., which is a provider of group homes and associated services for challenged individuals. They are requesting that the City grant an exception to the 2,500' spacing requirement under the Community Living Arrangement (CLA) statute at Wis. Stat. § 62.23(7)(i)1. to operate a Community Based Residential Facility (CBRF) for a maximum of 8-persons at 2213 Paul Road. The underlying zoning at the .47-acre parcel is "R-4" Single- and Two- Family Residential. The subject property is a vacant, rectangular shaped parcel of land on the east side of Paul Road approximately 300' south of where Joseph Road bisects Paul Road, and which is further identified as Lot 2 of a CSM recorded in V. 27, P. 151 (Tax Parcel # 812-304-021).



OFFICE OF CITY PLANNING,
CITY PLAN COMMISSION

Mr. Frey is also the sole member of JHA Properties, LLC, which is the owner of the subject property by virtue of a Warranty Deed dated April 1, 2014. As of January 1, 2014, there were 24 CBRF's and 7 AFH's dispersed throughout the City. TLC Homes, Inc. operates 3 CBRF's and 3 Adult Family Homes in the City

The petitioner plans to construct a single story, vinyl sided, residential structure meeting the dimensional and setback requirements of the "R-4" zoning district, that would be fully wheel chair accessible and sprinklered. The structure is proposed to: (i) be a total square footage of 4,097sf, including a 384sf porch and 3,713sf first floor area; (ii) have 8 bedrooms (ranging from 118sf to 142sf), storage and bathroom facilities, along with a living room, kitchen and dining areas; and (iii) include on-site parking for 6 vehicles. The Commission notes that there are no overnight or winter parking ban restrictions on either side of Paul Road.



The proposed 8-person CBRF would house individuals working at Holiday House, with referrals to this location coming from the Lakeland Care District (a regional long term care district providing family care program services in Manitowoc, Fond du Lac and Winnebago Counties). Individuals at Paul Road would be both male and females aged 18 and older, who are developmentally disabled or suffer from traumatic brain injuries. The home would be operated consistent with TLC Homes supervision and management, and would be staffed with additional staffing on duty in mornings and evenings.

The Commission notes that CLA's are regulated under Wis. Stat. § 62.23(7)(i) which includes the following provisions: (i) Section (7)(i)1. regarding the 2,500' separation requirements for CLA's and that an agent of a CLA may apply for an exception to this requirement, and the exception may be granted at the discretion of the City; (ii) Section (7)(i)2. which details population density requirements; and (iii) Section (7)(i)3. which states that a CLA is entitled to locate in any residential zone without restriction as to the number of CLA's and may locate in any residential zone, without being required to obtain "special zoning permission", except for the annual review provision under Section (7)(i)9. of the statute.

The Commission notes further that CBRF's are regulated by the WI Department of Health Services (DHS), and are further required to meet the certification requirements under WI Administrative Code DHS 83. The Division of Supportive Living is responsible for the licensing of all CBRF's in Wisconsin, and no CBRF's can operate unless they have been certified to do so by DHS.

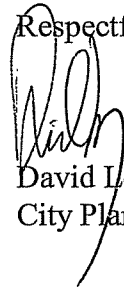
The Commission notes further that prior to the informational hearing, notices were mail to property owners within 200' of the subject property. Several property owners from the area either contacted the Planning Department or were present at the informational hearing, and expressed concerns ranging from the potential size of the facility and the potential for future expansion, to site drainage, overall neighborhood safety, the "fit" of this development into the neighborhood, concerns and impacts on wildlife in the area, and the diminution of property values.

As an additional comment on the legal issues surrounding these facilities, the Commission notes that WI courts have found that the spacing requirement and the variance procedure, as well as other siting and density criteria in the statute, to be inconsistent with the legislative histories of both the Federal Fair Housing Act Amendments of 1988 (which explicitly prohibits discrimination in housing because of a handicap and prohibits a refusal to make reasonable accommodations in rules, policies, practices or services when such an accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling), and the American with Disabilities Act (ADA), and as a result, were pre-empted by both laws. So, the Commission notes in closing that while a municipality may not intentionally

discriminate against the disabled, it may be unlawfully discriminating by failing or refusing to make a reasonable accommodation, which means that it would have to demonstrate and prove that the accommodation was infeasible or impractical, or would impose undue financial or administrative burdens.

In closing, the Commission unanimously recommends to Council that it grant the exception to the 2,500' spacing requirement and density requirement pursuant to Wis. Stat. § 62.23(7)(i)1. and 2., as requested to JHA Properties, LLC d/b/a TLC Homes, Inc. (together "TLC"), with the understanding that if TLC does not secure all required licenses from the State by December 31, 2014, this exception is void and terminates effective January 1, 2015.

Respectfully Submitted,



David Less
City Planner

Attachments

Re: Granicus #14-465

CERTIFIED SURVEY MAP OF AN EXISTING TRACT OF LAND RECORDED IN VOLUME 691, PAGE 19, LOCATED IN THE SE 1/4 OF THE SW 1/4 OF SECTION 12, T.19 N., R.23 E., CITY OF MANTOWOC, MANTOWOC COUNTY, WISCONSIN

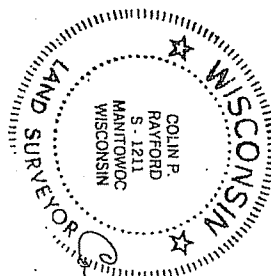
DOC # 1039375

VOL 27

PG 151

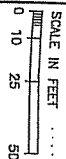
BEARINGS ARE REFERENCED TO THE EAST LINE OF THE SW 1/4 MANTOWOC COUNTY COORDINATE SYSTEM

TAX ID NO. 812-304-040



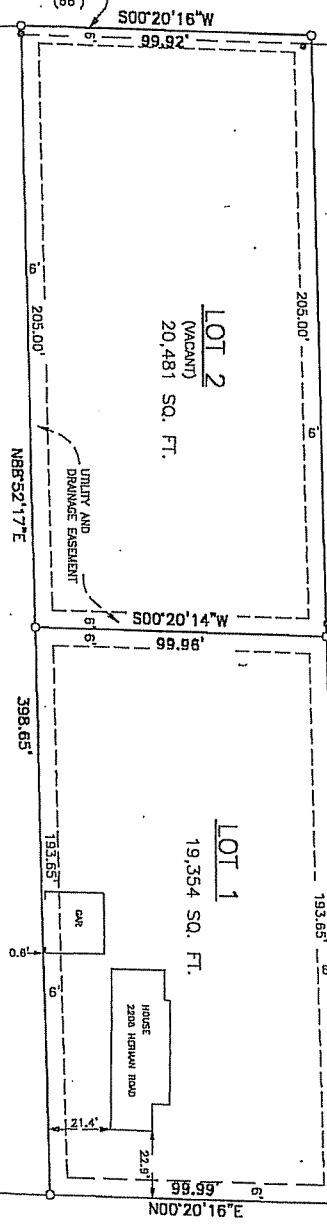
EXISTING MONUMENTS FOUND
1" X 18" IRON PIPE SET WEIGHING 1.13 LBS. PER LINEAL FOOT

CENTER SECTION 12 (3/4" BAY)
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E=225048.13

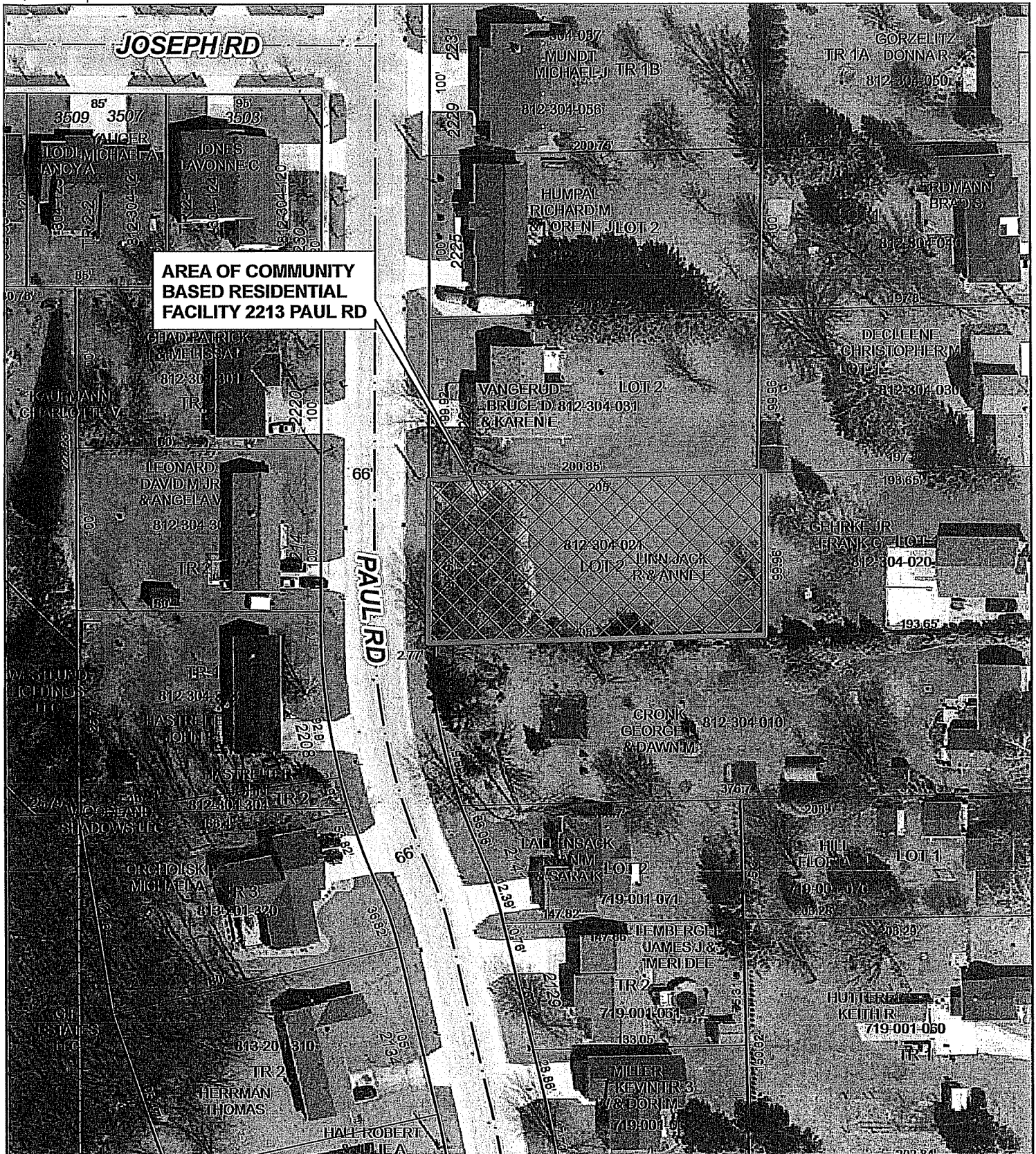


PAUL ROAD (66')

HERMAN ROAD



SW CORNER SECTION 12 (X IN CONCRETE)
N=312655.76
E=225048.13



**AREA OF COMMUNITY
BASED RESIDENTIAL
FACILITY 2213 PAUL RD**

2500' Rule Exception

City of Manitowoc, WI

100 50 0 100 Feet

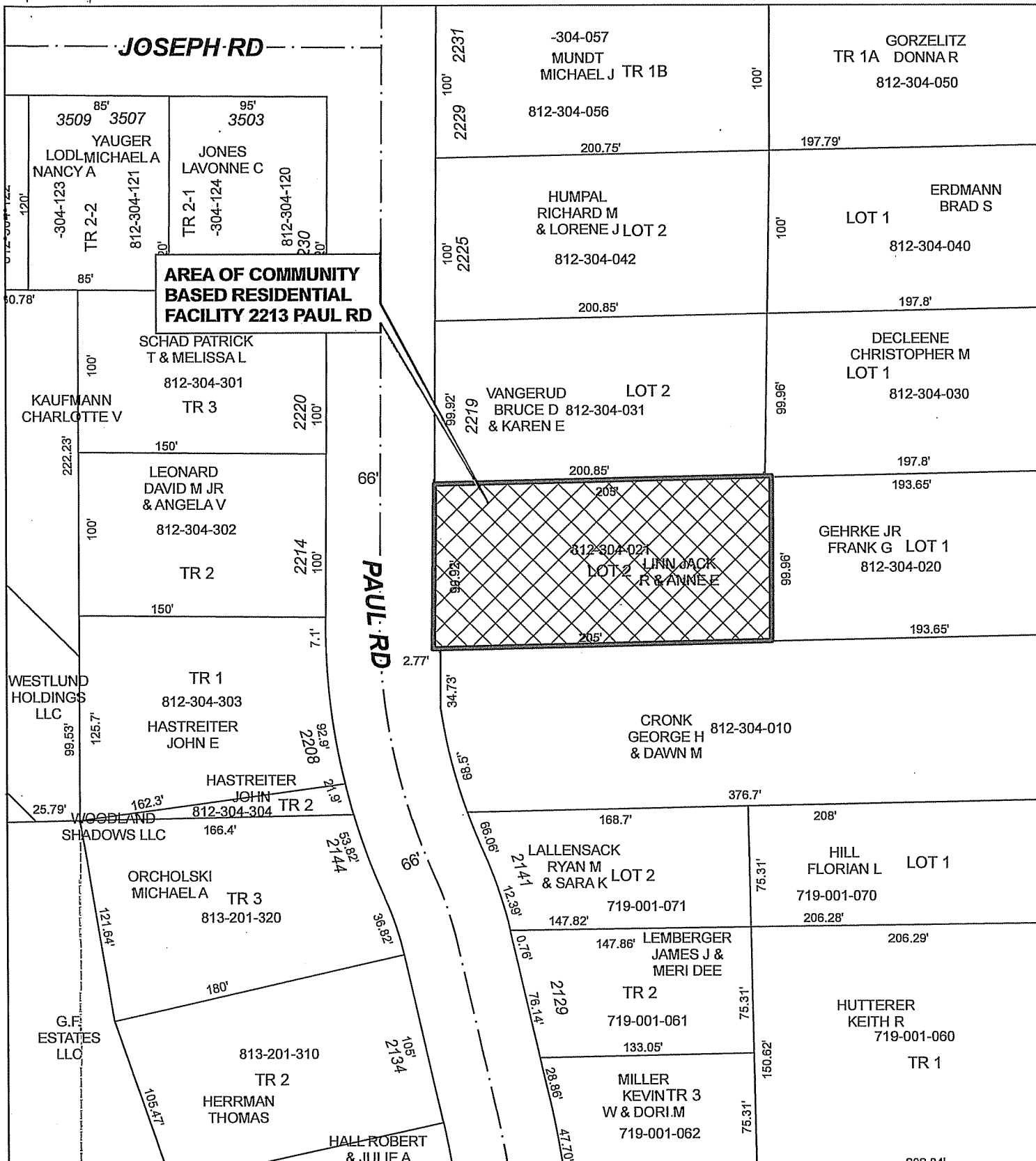


Area for Proposed Community
Living Arrangement for Community
Based Residential Facility at
2213 Paul Road



Prepared by City of Manitowoc
Planning Department
www.manitowoc.org
Aerial Photo: 4/11/2010
Map Printed: 4/2/2014
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DISCLAIMER: Maps and associated data are believed to be accurate, but are not warranted. This information is not intended for legal, survey, or other related uses. Please obtain the original recorded documents for legal or survey information.



2500' Rule Exception

City of Manitowoc, WI

100 50 0 100 Feet



Area for Proposed Community Living Arrangement for Community Based Residential Facility at 2213 Paul Road



Prepared by City of Manitowoc
 Planning Department
 www.manitowoc.org
 Aerial Photo: 4/11/2010
 Map Printed: 4/2/2014
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