

CITY OF MANITOWOC
WISCONSIN, USA
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March 6, 2015

To: Mayor and Common Council
From: Manitowoc City Plan Commission
Subject: **PC7-2015: Vogel – Interest to Purchase City Owned Land at Fleetwood Drive and Pleasant Street**

Dear Mayor and Common Council:

At the regular March 4, 2015 meeting of the Manitowoc City Plan Commission, the Commission reviewed a request from Jeff Vogel who is interested in purchasing some City owned property located at the northwest corner of Fleetwood Drive and Pleasant Street.

The area Mr. Vogel is interested in purchasing is approximately 23,326 square feet or 0.53 acres with 109' of frontage along Pleasant Street and 214' of frontage along Fleetwood Drive. Mr. Vogel plans on creating two lots and then construct a single family home on each lot.

The property is currently zoned "R-2" Single-Family Residential. The "R-2" district specifically permits single-family dwellings, no duplexes are allowed. The district also requires that all dwellings shall be at least 28' wide and be a minimum of 1,200 square feet. The adjacent land uses are either residential or open space parkland. Currently the City maintains the subject property by cutting the grass and plowing the sidewalks. An existing sanitary lateral is available off of Pleasant Street to service the easterly portion of the subject property but Mr. Vogel would have to construct two manholes to service the westerly portion.

The subject area is part of a larger 16.2 acre parcel that the City received title to in August 1993 via quit claim deed recorded in Volume 1037, Page 439 from Edward Krantz, Lila Bertler, Rudolph Janota, Jr., and Donna Janota. The deed does not place any covenants or restrictions on the property. A large portion of the 16.2 acre parcel is encumbered by wetlands or a gas line easement.

15-266

The Commission also notes that Wis. Statute 62.22(1) does not require any specific procedures for a municipality when selling property. "A municipality may, but is not required to, use a competitive bidding process when selling property. When a party interested in buying a particular parcel of land from a municipality initiates discussion with the municipality about the possibility of purchasing the parcel, the municipality may negotiate exclusively with the interested party and need not publicly advertise the lot's availability before selling the property to the interested party. ... municipalities should obtain an appraisal of any parcels to be sold to eliminate the possibility of a successful taxpayer's suit challenging the adequacy of the purchase price." (*January 2013, The Municipality*)

The Commission has reviewed and gone on record expressing their support for the creation of the proposed Certified Survey Map creating the two proposed lots of record.

The Commission unanimously recommended that the Council (i) authorize the City Assessor to provide an opinion regarding the value of the subject property; (ii) authorize the City Attorney to negotiate with Mr. Vogel to finalize a sale price and any other facets of the sale; (iii) authorize the Community Development Department to sign the certified survey map for the two proposed lots, costs of said survey to be paid by Mr. Vogel; (iv) upon successful negotiations authorize the City Attorney to prepare any and all necessary deeds and agreements for the sale; and (v) authorize the Mayor and City Clerk to sign the survey, deed and other related documents and have said documents recorded at the Register of Deeds Office with recording costs to be paid by Mr. Vogel.

Respectfully Submitted,



Paul Braun
City Planner

Paul Braun

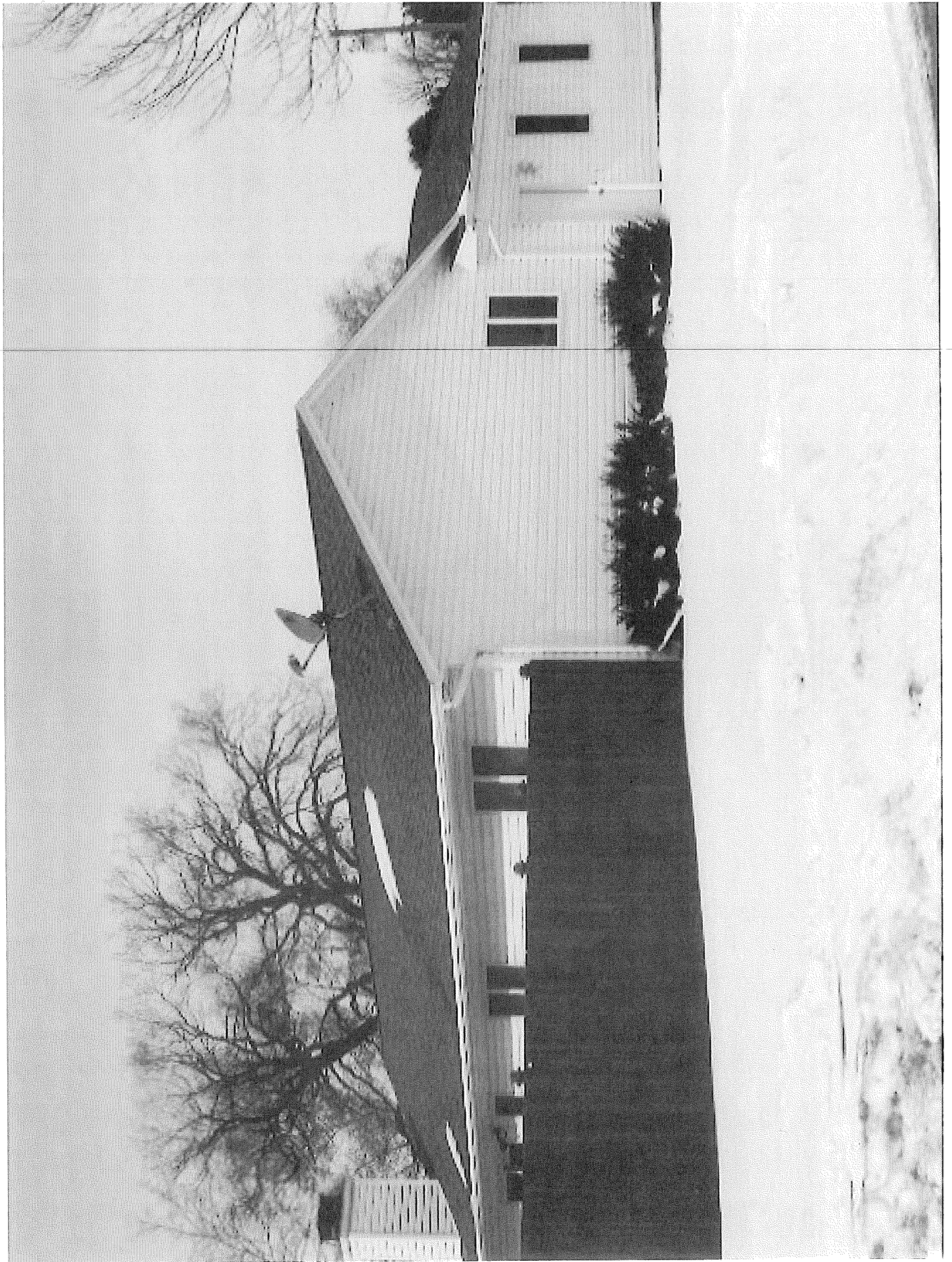
From: Julie Vogel <jvogel1234@yahoo.com>
Sent: Thursday, February 26, 2015 1:16 PM
To: Paul Braun
Subject: Vaccant land on Fleetwood - Northwest corner of Fleetwood and Pleasant
Attachments: DSCN2327.JPG; DSCN2329.JPG

To Whom It May Concern,

Jeff and Julie Vogel are interested in purchasing this parcel of vacant land from the City of Manitowoc.

Below is a picture of the type of home we would like to build on the lot.
1400 sq ft ranch, 3 bedroom, 2 full bath with 2 car garage.

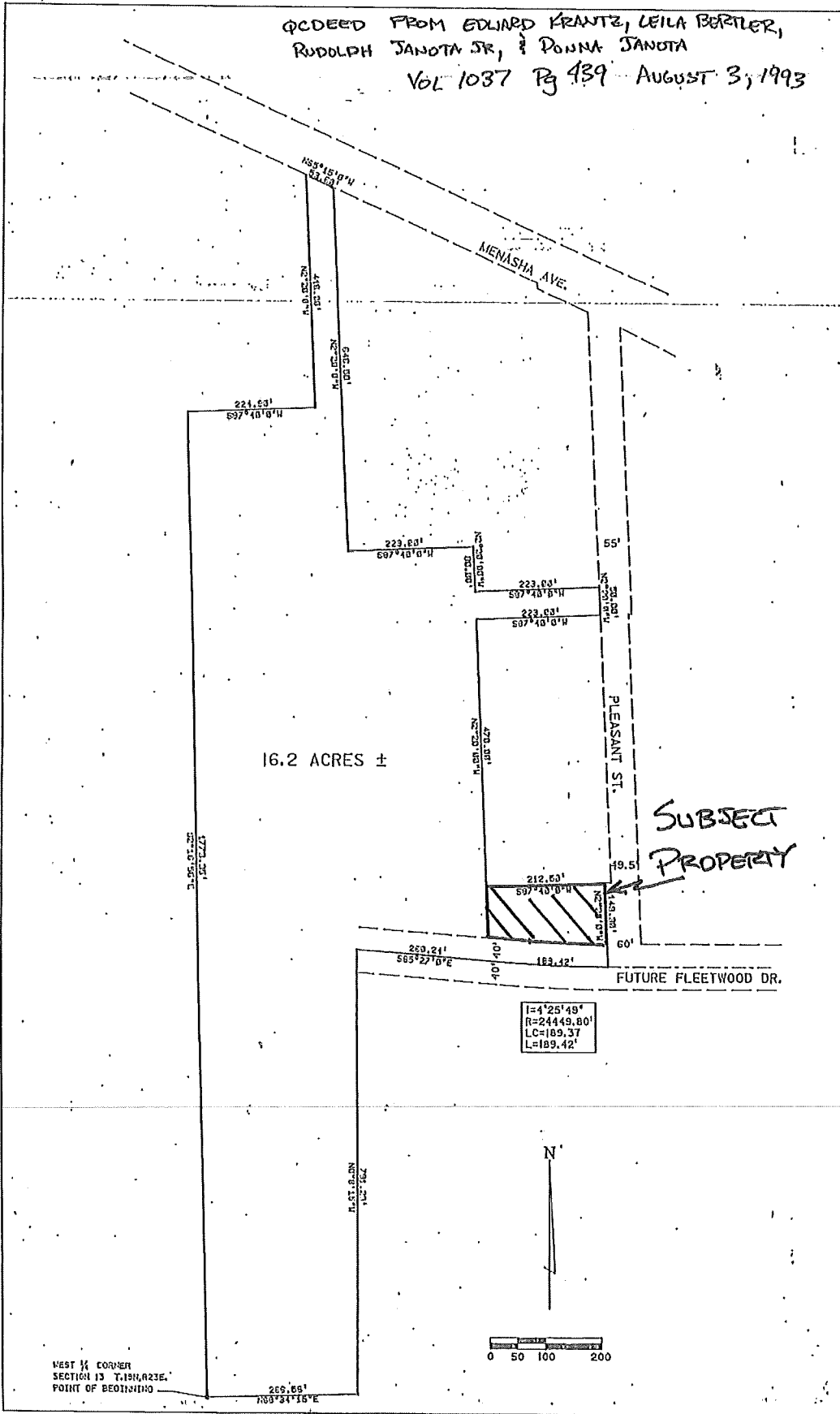
Thanks
Jeff Vogel
920-323-4861





1127

Q.CDEED FROM EDWARD KRANTZ, LEILA BEETLER,
RUDOLPH JANOTA JR, & DONNA JANOTA
VOL 1037 Pg 439 AUGUST 3, 1993

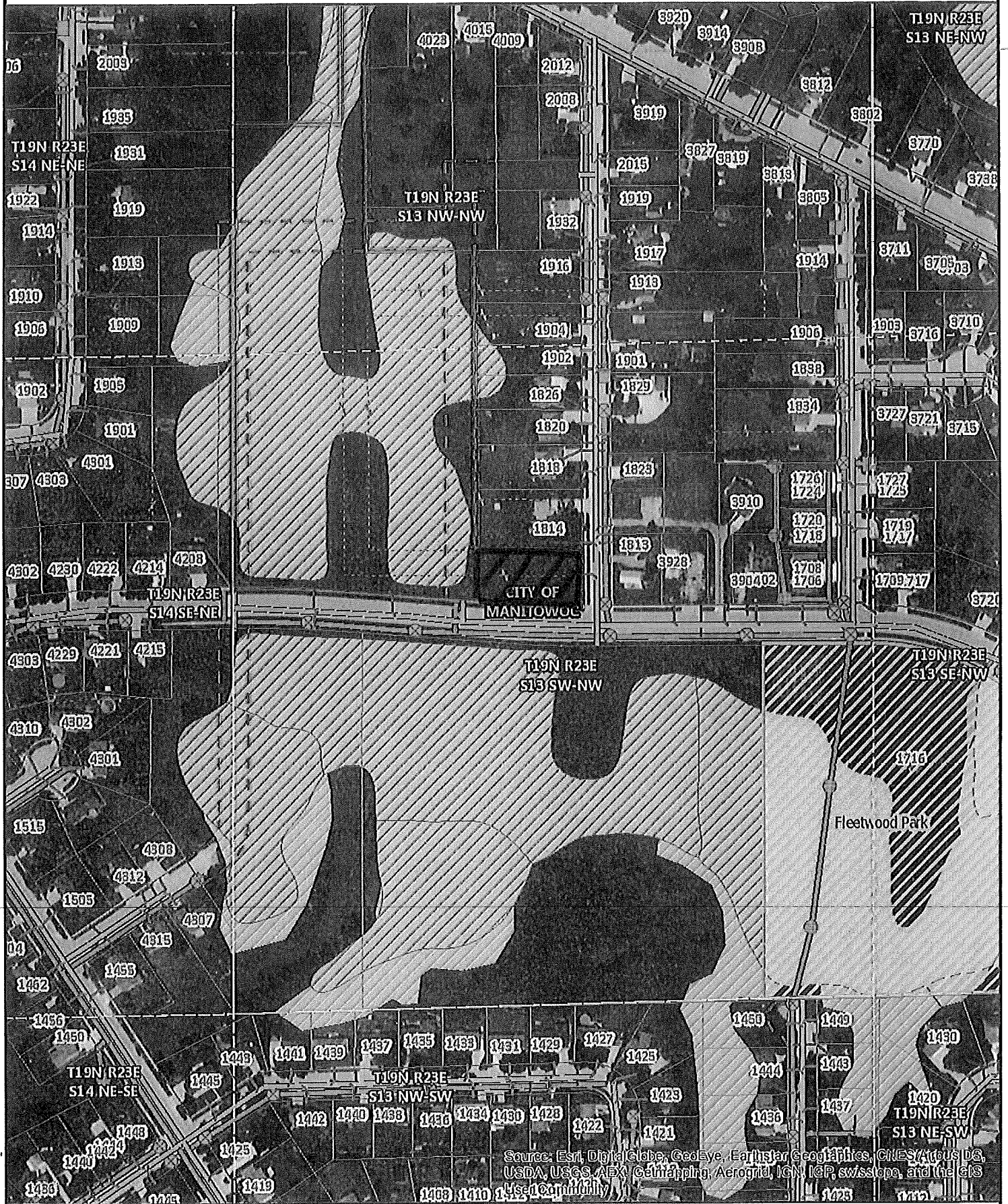


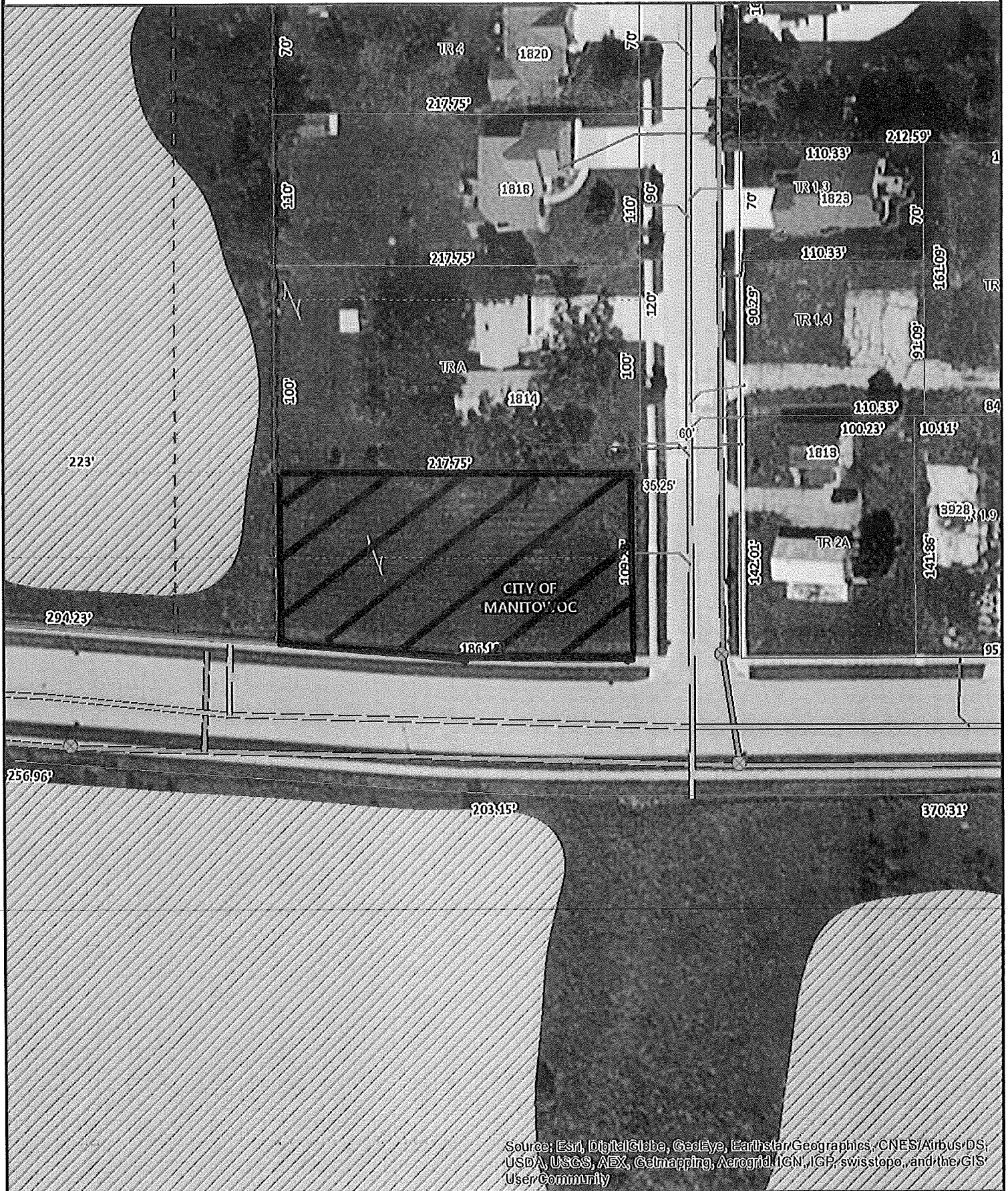
16.2 ACRES ±

SUBJECT PROPERTY

WEST 1/4 CORNER
SECTION 13 T19N, R23E,
POINT OF BEGINNING







Source: Esri, DigitalGlobe, GeoEye, Earthstar/Geographics, CNES/Airbus/DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



Abstract of
Ass't
6/21/93
720822

QUIT CLAIM DEED

Property at Fleetwood Dr. Pleasant St
& Menasha Ave.

By this deed, Edward G. Krantz, Leila Bertler, a/k/a Lila Bertler, Rudolph C. Janota, Jr., a/k/a Rudolph C. Janota and Donna M. Janota, his wife, Grantors hereby quit claim to the City of Manitowoc, Wisconsin, a municipal corporation, Grantee, for valuable consideration all of the Grantors' interest in the following tract of land in Manitowoc County, State of Wisconsin:

A parcel of land located in the W ¼ of Northwest Quarter (NW ¼) of Section 13, Township 19 North, Range 23 East, City of Manitowoc, Manitowoc County, Wisconsin, being more particularly described as follows:

Commencing at the West one-quarter corner of said Section 13, also being the true point of beginning; thence North 88°34'15" East along the quarter section line a distance of 266.56 feet to the west line of a Tract 3 as shown on Certified Survey Map described in volume 7 page 11 as recorded at the Manitowoc County Register of Deeds Office; thence North 0°08'15" West along said west lot line, a distance of 791.23 feet to the future centerline of Fleetwood Drive; thence South 85°27'00" East along said future centerline, a distance of 260.24 feet; thence continuing easterly along a curve to the left (I=4°25'49", R=2449.80', LC=189.37') a distance of 189.42 feet more or less to the west right-of-way line of Pleasant Street; thence North 02°20' West along said west right-of-way line a distance of 149.3 feet; thence South 87°40' West a distance of 212.5 feet; thence North 02°20' West a distance of 470 feet; thence North 87°40' East a distance of 223 feet to the west right-of-way line of Pleasant Street; thence North 02°20' West along said west right-of-way line a distance of 50 feet; thence South 87°40' West a distance of 223 feet; thence North 02°20' West a distance of 80 feet; thence South 87°40' West a distance of 223 feet; thence North 02°20' West a distance of 646.5 feet to the south right-of-way line of Menasha Avenue (aka CTH "P"); thence North 65°15' West along said south right-of-way line a distance of 53.6 feet; thence South 02°20' East a distance of 416 feet; thence South 87°40' West a distance of 224.9 feet to the west line of said Section 13; thence South along said section line a distance of 1773.35 feet to the true point of beginning.

Said parcel contains 16.2 acres more or less.

Tax parcel ID number 813-203-010-0.

Fee exempt under Section 77.25(2g).
This is not homestead property.
Exempt from weatherization standards W-7.

IN WITNESS WHEREOF, the Grantors, have hereunto set their hands and seals this 15th day of March, 1993.

Edward G. Krantz
Edward G. Krantz

Leila Bertler
Leila Bertler

RECEIVED FOR RECORD
VOL 1037 PAGE 439

'93 AUG 3 PM 1 14

MANITOWOC COUNTY, WI
PRESTON JONES
REGISTER OF DEEDS

7-6-93

440

acceptance of deed subject
accepted to dept commission

Committee recommends report to attorney's review
T. Frieder Gordon Kopetsky Larry Bernger

Paul B. Hansen

7/8/93
Kevin H. Crawford

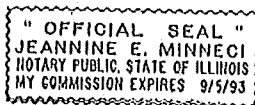
130453

Rudolph G. Janota, Jr.
Rudolph G. Janota, Jr.

Donna M. Janota
Donna M. Janota

STATE OF ILLINOIS)
DuPage) ss.
COUNTY)

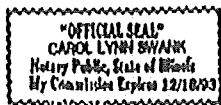
Personally came before me this 20th day of March, 1993 the above named Rudolph C. Janota, Jr. and Donna M. Janota known to me to be the persons who executed the foregoing instrument and acknowledged the same.



Jeannine E. Minneci
Notary Public,
DuPage County, Illinois.
My commission (expires) (ts) September 5, 1993

STATE OF ILLINOIS)
WILLIAMSON COUNTY) ss.

Personally came before me this 15 day of March, 1993 the above named Edward G. Krantz known to me to be the person who executed the foregoing instrument and acknowledged the same.



Carol Lynn Swank
Williamson County, Illinois
My commission (expires) (ts) 12-18-93

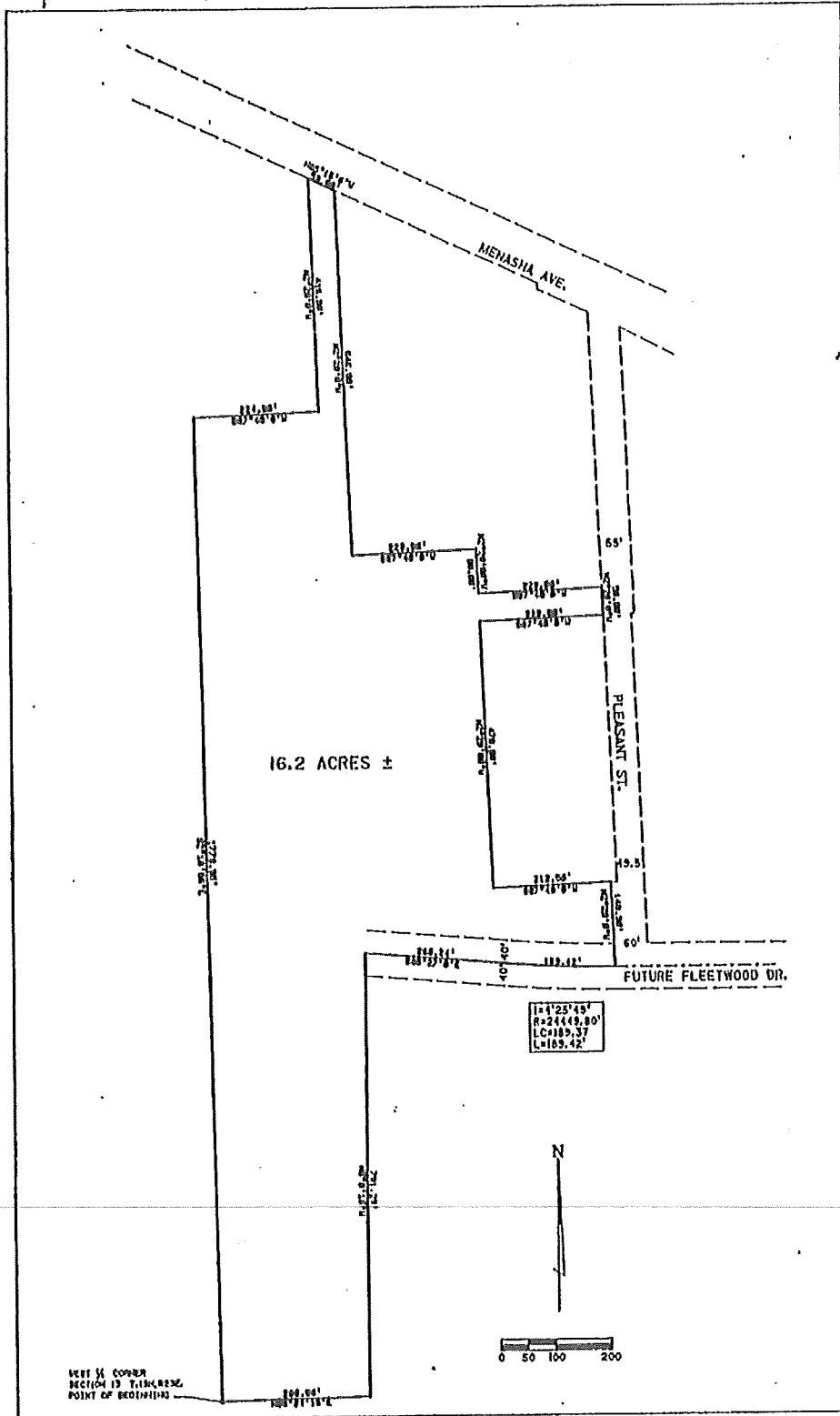
STATE OF WISCONSIN)
MANITOWOC COUNTY) ss.

Personally came before me this 17th day of March, 1993 the above named Lela Bertler known to me to be the person who executed the foregoing instrument and acknowledged the same.



Susan Beaman
Susan Beaman
Manitowoc County, Wisconsin
My commission (expires) (ts) Nov. 3, 1995

This instrument drafted by
Patrick L. Willis, City Attorney



FREQUENTLY ASKED QUESTIONS LEGAL

CH. 62 = CITIES

1. What procedures must a municipality follow when it sells land and may a municipality sell land for below fair market value?

Cities and villages are expressly authorized to sell and convey property. See Wis. Stat. secs. 61.34(1) and 62.22(1). The statutes do not specify any procedures a municipality must follow when selling property. We often get asked whether a municipality must, when selling property, solicit bids and sell to the highest bidder. A municipi-

pality may, but is not required to, use a competitive bidding process when selling property. A municipality may, just as well, choose to list the property with a real estate broker or establish any other reasonable sales procedure.

When a party interested in buying a particular parcel of land from a municipality initiates discussion with the municipality about the possibility of purchasing the parcel, the municipality may negotiate exclusively with the interested party and need not publicly

advertise the lot's availability before selling the property to the interested party.

We have advised municipalities in the past, however, that they should obtain an appraisal of any parcels to be sold to eliminate the possibility of a successful taxpayer's suit challenging the adequacy of the purchase price. The Wisconsin Supreme Court has held that a sale of municipal property authorized by the governing body may be voided if a taxpayer can establish

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(1) illegality, (2) fraud or (3) a clear abuse of discretion on the part of the governing body. *Newell v. Kenosha*, 7 Wis.2d 516, 96 N.W.2d 845 (1958); *Hermann v. Lake Mills*, 275 Wis. 537, 82 N.W.2d 167 (1957). If a municipal governing body sells property for substantially less than a fair consideration in money or other benefits, it may be found to have abused its discretion. See *Hermann v. Lake Mills*, *supra*. This is especially true if the land is sold to private parties who intend to use the land for purely private purposes.

When municipalities sell property to nonprofit organizations or governmental entities for a municipal public purpose, the sale price is less of a concern. Under such circumstances, the sale price could even be below fair market value as long as the amount of loss incurred by the municipality as a result of the sale is for a public purpose under the public purpose doctrine. The public purpose doctrine requires that a municipality's expenditure of public funds be for a public purpose. *Hopper v. City of Madison*, 79 Wis.2d 120, 256 N.W.2d 139, 142 (1977).

The courts have stated that what constitutes a public purpose is, in the first instance, a matter for the legislature to determine and that the legislature's determination is entitled to great weight. *Id.* The courts have established the following test for determining whether a particular appropriation is for a public purpose:

For the public purpose requirement to be met, the subject matter of the appropriation must be a public necessity, convenience or welfare. Each case must be decided with ref-

erence to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare. Factors which may be considered include the course or usage of the government, the objects for which taxes have been customarily levied, the objects which have been considered necessary for the support and proper use of government, the extent to which the expenditure results in competition with private enterprise, the presence or absence of a general economic benefit, the number of citizens benefited, and the necessity and infeasibility of private performance.

Id., 256 N.W.2d at 143 (all citations omitted). For further discussion of the public purpose doctrine see League legal opinion Powers of Municipalities 852.

Finally, any proposed sale of municipal property should be referred to the plan commission, if there is one, for its recommendation before final action is taken by the governing body. Wis. Stat. sec. 62.23(5). See also *Scanlon v. Menasha*, 16 Wis.2d 437, 114 N.W.2d 791 (1962).

2. Can municipalities adopt and enforce ordinances prohibiting the discharging of a gun within the municipality?

Yes. While municipalities are generally prohibited from regulating firearms more stringently than state law, the statutes expressly provide that municipalities may enact ordinances restricting the discharging of firearms. Wis. Stat. sec. 66.0409(3)(b).

Section 66.0409(2) prohibits, with certain exceptions, any city, village, town or county from enacting an ordinance or adopting a resolution that regulates the "sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration or taxation of any firearm or part of a firearm, including ammunition and reloader components," unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute. "Firearm" is defined to mean "a weapon that acts by force of gunpowder." Wis. Stat. sec. 167.31(1)(c). As a result of this prohibition, municipalities may adopt or continue to enforce ordinances regulating the use of a firearm only if the ordinance has a statutory counterpart. Any municipal ordinances which attempt to regulate firearms differently or more stringently than state law are invalid and unenforceable.

3. May a municipality enforce a municipal ordinance outside its corporate boundaries (e.g., on land the municipality owns that is located in an adjacent town)?

No. The general rule is that absent an express grant of authority to enforce an ordinance extraterritorially, municipal ordinances have no effect outside of the municipality's corporate boundaries. See *Wisconsin's Environmental Decade, Inc. v. DNR*, 85 Wis.2d 518, 271 N.W.2d 69, 76 n. 8 (1978).

Municipal ordinances would apply to territory owned by and lying near but not necessarily contiguous to a city or village if annexed under Wis. Stat. sec. 66.0223. 