



# Notice of Public Hearing

Zoning and Land Regulation Committee

Public Hearing: **September 26, 2017**

Zoning Amendment:  
**RH-2 Rural Homes District TO A-2  
(4) Agriculture District**

Acres: 5  
Survey Req. No

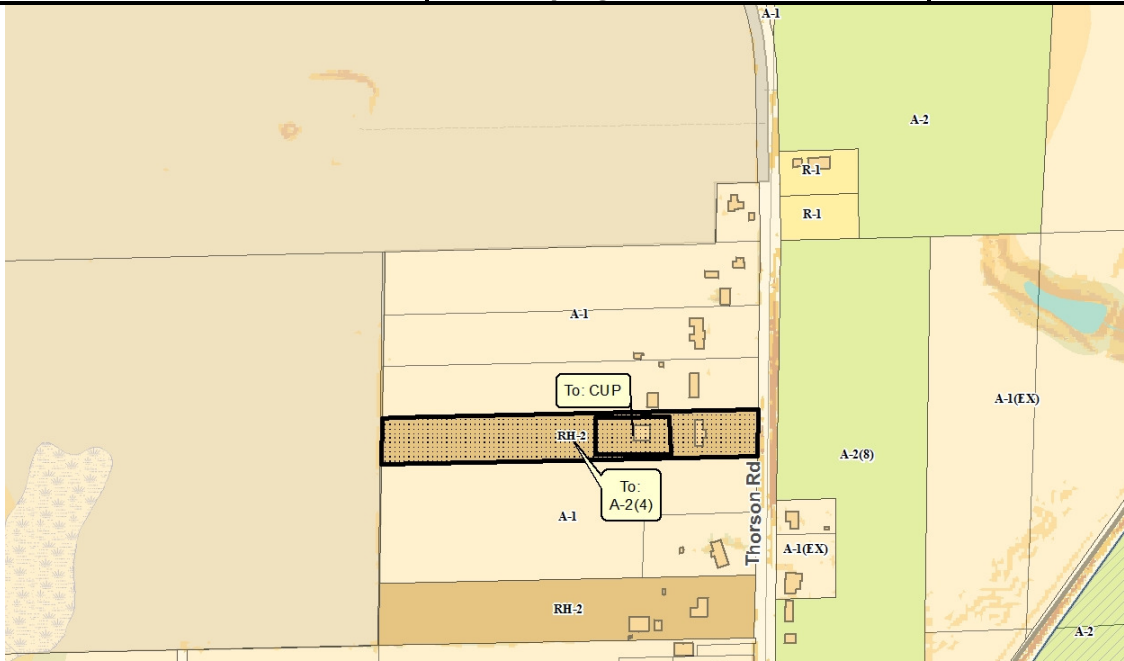
Reason:  
**Change zoning to allow for a  
limited family business  
(landscaping business)  
TO CUP: limited family business -  
landscaping business**

Petition: **Petition 11186  
CUP 02386**

Town/sect:  
**BURKE, Section 36**

Applicant  
**KENNETH L PARIS  
(Mark Bursaw)**

Location:  
**5009 THORSON ROAD**



**DESCRIPTION:** Applicant requests A-2(4) Agriculture zoning with a conditional use permit for a “Limited Family Business” to allow operation of a small landscaping business on the 5-acre property located at 5009 Thorson Road (note that the applicant is now the owner of the property). Applicant owns and operates A-1 Landscaping, a business providing landscaping services in the greater Madison area, and snow plowing service in winter months. According to the application materials, the business has 1 full time employee, and proposed hours of operation would be 7:30am-5pm, Monday-Friday. The proposal would include some outdoor storage of materials used in the landscaping business. Trucks and other equipment would be stored in an existing accessory building.

**OBSERVATIONS:** There is an existing residence and accessory building on the property. The property was rezoned to RH-2 in 1993 in order to allow 2 horses (livestock) to be housed on the property. The land is located in an established residential neighborhood with 12 residences within 1000 feet of the property. The City of Madison boundary abuts the west property line.

**TOWN PLAN:** The property is located in the town’s “low density residential” and “rural residential” planning areas. The property is subject to the town of Burke / City of Madison / City of Sun Prairie cooperative plan and will eventually become part of the city of Madison, though it is unclear if the proposal will be subject to city of Madison review/approval.

**RESOURCE PROTECTION:** No areas of resource protection corridor located on the property.

**STAFF:** As indicated above, the subject property is located in the town’s “low density residential” and “rural residential” planning areas. Town plan policies promote limited single family residential development in the area and seek to avoid conflicts between incompatible uses. Given the proximity of neighboring rural residential uses, there is potential for nuisance complaints associated with the operation of a landscaping business on the property.

The proposal appears to be inconsistent with town plan policies for the area. Attached are excerpts from applicable town plan objectives and policies. See additional information on page 2, below.

**TOWN:** Denied. See town action report.

**STAFF:**

The town has denied the petition, citing concerns with incompatibility of the use with the use of neighboring properties. It's worth noting that the Limited Family Business is designed in large part to accommodate small scale, family run businesses, "...without the necessity for relocation or rezoning while at the same time protecting the interests of adjacent property owners." The applicant recently purchased the property and would be relocating his existing business to the subject property. Concerns have been expressed at the town level regarding the size of the applicant's landscaping business and questioning if it meets the limitation of no more than one or one full-time equivalent employee.

The attorney representing the applicant has submitted a letter to the ZLR Committee indicating that the applicant intends to appeal the town's denial of the petition to the County Board of Adjustment.

It's important to note that there is no Board of Adjustment avenue for appealing a town/county legislative action of disapproving a zoning map amendment (rezone). When a town disapproves a zoning map amendment within 30 days of the county public hearing on a petition, the county's only options are to, 1) also disapprove the petition, or 2) approve the petition with some form of change or amendment. If the county were to approve the petition with an amendment, the amended petition would be sent back to the town for one final town vote to approve or deny the petition as amended by the county. These procedures are prescribed under section 59.69(5)(e) of Wisconsin Statutes.

When the ZLR Committee takes action on a combined rezone / Conditional Use Permit petition, its action on the Conditional Use Permit includes a critical provision indicating that the action is contingent on the rezoning becoming effective. This procedure is an explicit acknowledgement that the committee's action on a zoning map amendment is only a recommendation to the full county board, and that the county executive also has veto authority over such amendments. Given the applicable procedural requirements of state statutes, there does not appear to be any Conditional Use Permit appeal option to the Board of Adjustment if the rezoning is not also recommended for approval.

Staff recommends denial of the zoning petition based on the following considerations:

- The request for agricultural zoning is inconsistent with the Town of Burke Comprehensive Plan in which the Town Plan designates residential development for the property. The current Rural Homes Zoning District is consistent the Town Plan and should remain.
- The request is inconsistent with town plan policies that seek to avoid siting incompatible uses in close proximity to one another.
- The potential for conflicts and nuisance complaints regarding traffic, noise, and visual aesthetics between the proposed business use and existing adjoining rural residential uses.

If the zoning change is recommended for denial, Staff suggests that the Committee take "no action" on the conditional use permit given that Limited Family Business is not listed as a conditional use in the Rural Homes Zoning District (current zoning).

**Sept 26<sup>th</sup> ZLR Action:** The petition was postponed due to public opposition and to see if the Town would be willing to reconsider their denial.

**Staff Update:** County Staff has sent a letter to the Town of Burke to find their willingness to reconsider the petition. The Town Chair has responded and stated that the Town Board acted on the petition and would not reconsider. See letter.

**Oct 10<sup>th</sup> ZLR Action:** The petition was postponed at the petitioner's request.

**Board of Adjustment:** The Board of Adjustment Chair found that it would be out of order to hear such an appeal until such a time that the property is included in a district that a CUP for a limited family business could be granted.

**Staff Update:** The action to postpone was reviewed by Assistant Corporation Counsel David Gault. He stated that there was no need to postpone action on the rezoning petition. A conditional use permit cannot be obtained unless the correct zoning district classification is assigned to the property. He has suggested that the Committee take action on the rezoning petition in order to determine the zoning classification of the property.