



PREPARED FOR THE PLAN COMMISSION

**Project Address:** 3315 Nelson Road, Town of Burke  
**Application Type:** Preliminary Plat  
**Legistar File ID #** [34361](#)  
**Prepared By:** Timothy M. Parks, Planning Division  
Report includes comments from other City agencies, as noted

**Summary**

**Applicant & Property Owner:** James & Deborah Duckart; 2916 Pebble Valley Court; Sun Prairie.

**Surveyor:** Dan Birrenkott, Birrenkott Survey, Inc.; 1677 N. Bristol Street; Sun Prairie.

**Requested Action:** Approval of a preliminary plat creating 3 single-family lots and 3 agricultural lots.

**Proposal Summary:** The applicants are requesting approval of a preliminary plat to create 3 lots for 3 existing single-family residences located at 3311, 3313 and 3315 Nelson Road, and 3 lots for their remaining agricultural land. The applicant wishes to commence construction of the subdivision as soon as all regulatory approvals have been granted.

**Applicable Regulations & Standards:** The process for subdivisions located within the corporate limits of the City of Madison or within the Extraterritorial Plat Approval Jurisdiction is outlined in Section 16.23 of the Subdivision Regulations. In addition, the subject site is located within the Boundary Adjustment Area–Madison (BAA-M) designated in the Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan dated January 5, 2007.

**Review Required By:** Plan Commission and Common Council.

**Review Schedule:** The State’s subdivision statute, Wis. Stats. 236, requires that a preliminary plat 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 is deemed approved. The proposed preliminary plat application was submitted to the City on April 23, 2014. Therefore, the 90-day review period for this plat is scheduled to expire circa July 23, 2014.

**Summary Recommendation:** The Planning Division recommends that the Plan Commission forward the preliminary plat of Windswept, to the Common Council with a recommendation of **approval** subject to input at the public hearing and the conditions of approval from reviewing agencies beginning on page 5 of this report.

**Background Information**

**Parcel Location:** An 18.8-acre parcel located approximately 2,000 feet east of Reiner Road on the south side of Nelson Road.

**Existing Conditions and Land Use:** The site is developed with 3 existing single-family residences located on the eastern third of the subject site. The rest of the property is used for agricultural purposes and includes 7 sheds of varying size scattered across the property. The westernmost 50 feet of the property is subject to a natural gas pipeline easement.

**Surrounding Land Use and Zoning:**

North: Undeveloped land, zoned A-1 (Agricultural District);

South: Undeveloped land and quarry, zoned A-1;

West: Midwest Veterinary Supply and general warehousing along Maly Road, zoned C-2 (Commercial District);

East: Single-family residences fronting Nelson Road zoned A-1 and in the Sunnyburke Heights subdivision, zoned R-2 (Residence District).

**Adopted Land Use Plan:** The subject site is located within Peripheral Planning Area C as defined in the Comprehensive Plan. Planning Area C is a “Group 1” planning area recommended as a potential location for relatively near-term City expansion and future urban development once a detailed neighborhood development plan is adopted to guide urban development in this area.

A large portion of Peripheral Planning Area C was included in the limits of the Northeast Neighborhoods Development Plan, which provides recommendations for land use and design, open space preservation, transportation, urban services delivery, development phasing and plan implementation for an area generally bounded by Interstate 94 on the south, Interstate 39-90-94, the Village of Autumn Lake subdivision and a Wisconsin Department of Transportation railroad corridor on the west, Nelson Road on the north, and Thorson Road and CTH T on the east. Due to the large size of the planning area, it was divided into two phases, with the recommendations for the portion of the planning area located south of Burke Road included in a Phase 1 plan adopted in October 2009. The plan for the portion of the planning area located north of Burke Road – including the subject site – has not been adopted at this time.

**Environmental Corridor Status:** The subject site is not located in the Central Urban Service Area and is not located in a mapped environmental corridor. Corridor map G4 identifies a small area of steep slopes in excess of 12%.

**Public Utilities and Services:**

Water: Property is not served by municipal water;

Sewer: Property is not served by public sewer;

Fire protection: Town of Sun Prairie Fire Department;

Emergency medical services: Blooming Grove-Burke-Maple Bluff EMS;

Police services: Dane County Sheriff’s Department;

School District: Sun Prairie School District.

The 3 residences are currently served by well and septic. At the present time, the subject site is approximately a half-mile east of the nearest City limits and three-quarters of a mile from the nearest City water and sewer facilities (east of the site on Nelson Road, just east of Felland Road).

**Project Description**

The applicants are requesting approval of a preliminary plat to divide their approximately 18.8-acre property located on the south side of Nelson Road, roughly 2,000 feet east of Reiner Road. The property is primarily a 1,321-foot wide property along Nelson Road that is 555 feet deep (prior to proposed road right of way dedication) that also includes an 800-foot deep and 177-foot wide extension to the south. The property is

developed with 3 single-family residences of varying size on the eastern third of the Nelson Road frontage and 7 sheds of varying size scattered across the site. Two of the residences, at 3313 and 3315 Nelson Road, are served by an asphalt driveway, while the residence at 3311 Nelson is served by its own gravel driveway. Most of the property west of the residences is used for agricultural purposes with the exception of a modestly sloped and wooded area that extends north-south across the western third of the property and the southerly extension. The westernmost 50 feet of the property is subject to an easement for a natural gas pipeline.

The proposed subdivision calls for each of the residences to occupy their own lot, shown as Lots 1, 3 and 4 of the preliminary plat. Those lots were recently rezoned from County C-1 commercial zoning to R-1 (Residence District), R-1a (Residence District) and RH-1 (Rural Homes District), respectively, by the Dane County Board. Lots 2, 5 and 6 of the plat will be agricultural lots in A-1 (Agriculture District) zoning. Lot 6 of the plat includes the southerly extension of the property as well as 66 feet of frontage along Nelson Road in compliance with County zoning and subdivision regulations. A 66-foot wide access and utility easement centered on the existing asphalt driveway on the eastern portion of the site is proposed for the benefit of Lots 1-4.

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

The Burke Town Board conditionally approved the proposed preliminary plat as outlined in the attached approving resolution on May 21, 2014. Dane County granted conditional approval of the proposed preliminary plat as outlined in a letter dated March 26, 2014 from Dan Everson, Land Division Review, Dane County Department of Planning and Development. On November 21, 2013, the Dane County Board approved Petition 10568 rezoning the subject site from C-1 (Commercial District) to A-1, RH-1, R-1 and R-1a subject to a condition that an approved subdivision plat be submitted and/or recorded within 2 years.

## Analysis & Conclusion

**Town of Burke Cooperative Plan:** The subject site is located within the Boundary Adjustment Area–Madison (BAA-M) designated in the Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan dated January 5, 2007. Under the provisions in Section 11C of the Cooperative Plan, the Town of Burke has agreed that the subdivision of property is considered “development” and is therefore subject to City approval using the City's development review ordinances and adopted plans. The full cooperative plan may be found online at the following link:

<http://www.cityofmadison.com/planning/BurkeDeFMadSPCombined010507%20adopted%20final.pdf>

**City of Madison Land Use Plan:** The subject site is located within Peripheral Planning Area C as defined in the Comprehensive Plan. Planning Area C is a “Group 1” planning area recommended as a potential location for relatively near-term City expansion and future urban development once a detailed neighborhood development plan is adopted to guide urban development in this area. The portion of Area C that includes the site was envisioned primarily as a low-density residential area that would be developed in a traditional neighborhood development pattern.

A large portion of Peripheral Planning Area C was included in the limits of the Northeast Neighborhoods Development Plan, which provides recommendations for land use and design, open space preservation,

transportation, urban services delivery, development phasing and plan implementation for an area generally bounded by Interstate 94 on the south, Interstate 39-90-94, the Village of Autumn Lake subdivision and a Wisconsin Department of Transportation railroad corridor on the west, Nelson Road on the north, and Thorson Road and CTH T on the east. Due to the large size of the planning area, it was divided into two phases, with the recommendations for the portion of the planning area located south of Burke Road included in a Phase 1 plan adopted in October 2009. The plan for the portion of the planning area located north of Burke Road – including the site – has not been adopted at this time. However, a working concept plan for Phase 2 of the Northeast Neighborhoods Development Plan north of Burke Road recommends the future development of the subject property and lands located along the south side of Nelson Road extending east to the Sunnyburke Heights subdivision and eastern edge of the planning area for low-density residential development up to 15 units an acre.

**Extraterritorial Approval Criteria:** The Plan Commission shall determine that the proposed land division complies with each of the following criteria:

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.

Planning staff has discussed the size, configuration and zoning of the proposed lots with the applicants over the last year and a half and believes that the proposed preliminary plat represents the best subdivision proposal possible for the property given the existing development pattern present on the site, and believes that the extraterritorial criteria above can be met. While the design of the proposed lots is unique compared to other lots nearby and to most subdivision proposals reviewed by the Plan Commission, their design is strongly influenced by the location of the existing buildings on the property and the need for each proposed lot to have frontage on a public road per County ordinances. However, were the 3 residences not already long-established on the site, it is very unlikely that the proposed configuration of Lots 1-4 would meet the above criteria. Planning staff has reviewed the layout of the plat compared to working concepts for the future street network in Phase 2 of the Northeast planning area and determined that the layout of Lots 5 and 6 will not have a negative impact on the future planning and urban development of this area, although it acknowledges that Lots 1-4 are likely to remain in their proposed configuration for the foreseeable future, and that their future development potential is likely limited. However, the ability to connect those lots to future public utilities once they are available appears feasible.

Staff was more concerned about the impact of the proposed development when the applicants submitted their zoning petition to Dane County in 2013 with a request to retain the C-1 commercial zoning for proposed Lot 5 of the plat. The County indicated during its review of the rezoning request that the majority of the property had been commercially zoned since 1963 with the exception of the southerly extension, which was zoned A-1. Planning Division staff submitted correspondence to the County opposing the rezoning if Lot 5 retained its C-1 zoning over concerns that continued commercial zoning for the property would be inconsistent with the low-

density residential development anticipated by the Comprehensive Plan pending completion of a more detailed neighborhood plan. However, this concern was obviated by the County's Zoning and Land Regulations Committee when it reviewed the rezoning last fall and recommended that Lot 5 be rezoned from C-1 to A-1, which was subsequently adopted by the County Board when it approved the rezoning request.

## Recommendation

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

The Planning Division recommends that the Plan Commission find the extraterritorial approval criteria met and forward the preliminary plat of Windswept, located at 3315 Nelson Road in the Town of Burke, to the Common Council with a recommendation of **approval** subject to input at the public hearing and the following conditions:

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

1. Prior to recording of a final plat of this subdivision, the applicant shall execute a restrictive covenant over the proposed lots in a form approved by the Planning Division. The restrictive covenant shall require the written approval of the Planning Division Director of the location of any new or expanded principal or accessory buildings. The purpose of this restriction is to ensure that the placement of such buildings does not impact the City's ability to provide public services, install public improvements, extend planned streets, or accomplish future attachments.

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

#### City Engineering Division (Contact Janet Schmidt, 261-9688)

2. The legal description on the preliminary plat shall be corrected. The current description does not follow the exterior of the proposed plat and omits a portion of proposed Lot 4.
3. The Common Access Easement shall further define restrictions along with construction and maintenance requirements on the final plat or shall be accomplished with a separate document recorded at the Dane County Register of Deeds and referenced on the final plat.
4. Revise the line type of the limits of the Access Easement to differentiate the locations where the line is not coterminous with a lot line. The current map is difficult to decipher that the easement lies over Lot 3.
5. Specify if the utility easement shown is to be private or public. In either instance, the easement shall indicate the entities that are beneficiaries of the easement and shall state any restrictions of the uses granted by the easement.
6. It is assumed the 66-foot wide leg of Lot 6 will be utilized for a future driveway serving a future dwelling on Lot 6. This will likely require improvements within the high pressure gas main easement shown on the plat. It is advised that the owner/ applicant contact the gas main company to coordinate any future improvements necessary to permit development of Lot 6 prior to submitting the final plat to confirm the improvements will not be prohibited by the gas main company.

7. Provide the dimension of the south line of Lot 5. Change the adjoiner Wood Ger Condo to the Wood Ger Plat.
8. Show and label the easement to Wisconsin Power and Light per Document No. 617570 that encumbers the easterly side of Lot 2 (East 82.2 is subject to the easement per the document).
9. Note all agreements of record encumbering the lands within the plat.
10. Any future attachment of the area including the common access to the City of Madison will require the private access to be named.
11. The property will be subject to Madison Metropolitan Sewerage District fees and City of Madison Sewer Impact Fees when sewer becomes available and property is annexed into the City.

12. The applicant shall dedicate a 10-foot wide Permanent Limited Easement for grading and sloping along Nelson Road.

13. If the lots within this plat are inter-dependent upon one another for stormwater runoff conveyance, and/or a private drainage system exists for the entire site, an agreement shall be provided for the rights and responsibilities of all lot owners. Said agreement shall be reviewed and placed on file by the City Engineer, referenced on the final plat, and recorded at the Dane County Register of Deeds.

14. 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 plat in areas where this control exists. The surveyor shall identify any deviation from City Master Control with recorded and measured designations. The City has established WCCS, Dane Zone Coordinates on all PLS corners within its corporate boundary. Visit the City Engineering Division website for current tie sheets and control data ([http://gis.ci.madison.wi.us/Madison\\_PLSS/PLSS\\_TieSheets.html](http://gis.ci.madison.wi.us/Madison_PLSS/PLSS_TieSheets.html)). If a surveyor encounters an area without a published WCCS Dane Zone 1997 value, contact the City Engineering Division for this information.

15. In accordance with Section s.236.20(2)(c)&(f), Wisconsin Statutes, the applicant must show type, location and width of any and all easements. Clearly identify the difference between existing easements (cite Register of Deeds recording data) and easements which are being conveyed by the plat. Identify the owner and/or benefiting interest of all easements.

**Traffic Engineering Division** (Contact Eric Halvorson, 266-6527)

16. The applicant shall revise the plat to provide access rights to the 66-foot wide easement to Lot 1.

17. A declaration of conditions and covenants streetlight and traffic signals shall be executed and returned prior to signoff of the final plat for recording. The applicant will need to provide a deposit for their reasonable and proportionate share of traffic signal costs.

18. Public signing and marking related to the development may be required by the City Traffic Engineer for which the developer shall be financially responsible.

**Zoning Administrator** (Contact Pat Anderson, 266-5978)

This agency did not provide comments for this request.

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

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

**Water Utility** (Contact Dennis Cawley, 261-9243)

This property is outside the Madison Water Utility service area.

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

This agency did not provide comments for this request.

**Parks Division** (Contact Kay Rutledge, 266-4714)

This agency did not provide comments for this request.

**Office of Real Estate Services** (Jenny Frese, 267-8719)

19. Prior to sign-off of the final plat, the Owner's Certificate shall be executed by all parties having an interest in the property, pursuant to Wis. Stats. 236.21(2)(a). Certificates shall be prepared with the ownership interests consistent with the most recent title report. Please correct the spelling of the owner's name: Deborah.
20. A certificate of consent for all mortgagees/vendors shall be included following the Owner's Certificate(s) and executed prior to final CSM sign-off.
21. Under 236.21(3) Wis. Stats. and MGO Section 16.23(5)(g)(1), the property owner shall pay all real estate taxes and special assessments that are accrued or delinquent for the subject property prior to CSM recording. As of July 10, 2014, the 2013 real estate taxes are paid for the subject property and there are no special assessments reported.
22. The final plat shall be revised prior to recording as follows:
  - a.) Add the two sewage covenants to "Notes" and include their document numbers, as reported in title.
  - b.) Depict and label by document number the Wisconsin Power and Light Easement reported in title and included in the legal description for Warranty Deed 4814910.
  - c.) Depict and label the shared well, and 20-foot easement, included in the legal description for Warranty Deed 4819411.
  - d.) When the title update is prepared, ensure the typo in the parcel number is corrected to 014-0810-243-8030-8.