

Kristi Heim

From: hbolcnatalie@aol.com
Sent: Friday, October 14, 2011 1:33 PM
To: Kristi Heim; Chris Klein; Michael Taylor.; Stan Sevenich; Mark Langdon; Steve Krueger; Daniel Zelinski; Jim Englebert; Kevin Benner; Don Merkes; Pamela Captain
Cc: tschanke@wi.rr.com; schankem@oakridgegardens.com; rbellin@hboattorneys.com
Subject: Lake Park Villas Blight Determination
Attachments: schanke memo_20111014133950.pdf

Attached hereto please find the written statement and notice of objection of Thomas Schanke to be addressed by the Redevelopment Authority and Common Council on Monday, October 17, at 4:30 and 6:00p.m., respectively. Please note that a hard copy of the same will be personally served upon the RDA. Thank you for your attention to this matter.

Very truly yours,
Natalie Sturicz-Heiges

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Memorandum

To: City of Menasha Redevelopment Authority
City of Menasha Common Council

From: Attorney Robert E. Bellin, Jr.

Date: October 14, 2011

RE: Lake Park Villas blight determination and redevelopment plan

The Redevelopment Authority will hold a public hearing on Monday, October 17, 2011 to consider comments on the proposed preliminary determination of blight in Lake Park Villas. Such hearing shall be followed by the Common Council's meeting. The City of Menasha appears to seek said blight determination in an effort to eventually take possession of all vacant lots in the vicinity of Lake Park Villas for purposes of selling them to a developer that will turn the lots into additional residential property. This redevelopment plan would include parcel number 7-01700-16 (Lot 16), which is owned by Thomas Schanke. In support of its "blight" request, the City of Menasha has prepared a Memorandum in which it cites selectively from Wis. Stats. § 66.1333 and provides several bullet points that purport to support a blight determination. It is Mr. Schanke's position that none of the property in the area of Lake Park Villas falls within the statutory definition of "blight," either under § 66.1333, which is the statute to which the City refers for purposes of this meeting, or § 32.03(6)(a), which is the statute the City will need to follow if it intends to proceed after Monday's hearing with an action against the private land-owners in eminent domain.

Please note that Mr. Schanke hereby objects to any determination that the vacant land included in the Lake Park Villas redevelopment plan is blighted, and specifically objects to any determination that Lot 16 is blighted. Mr. Schanke further objects to the redevelopment plan and inclusion of his property within that plan. These objections are made pursuant to §66.1333(5) and (6) of the Wisconsin Statutes, and are more fully described below.

Wis. Stats. Ch. 66

Section 66.1333 of the Wisconsin Statutes is also known as the Blight Elimination and Slum Clearance Act and was written with the express purpose of providing "for the elimination and prevention of substandard, deteriorated, slum and blighted areas" and "encouraging well-planned, integrated, stable, safe and healthful neighborhoods, the provision of healthful homes, a decent living environment and adequate places for employment of the people of this state and its communities" § 66.1333(2), Wis. Stats. The complete definition provided by the same section for "blighted property" is as follows:

“Blighted property” means any property within a city, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provisions for ventilation, light, air or sanitation, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime, and is detrimental to the public health, safety, morals or welfare, or any property which by reason of faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair market value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a city, retards the provisions of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any property which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

See Wis. Stats. § 66.1333(2m)(bm). “Blighted area” is defined similarly with the exception that it includes an entire area consisting of multiple properties, “including a slum area . . .” Wis. Stats. § 66.1333(2m)(b).

Blight is further defined by case law in Wisconsin. The definition of blight as it is contained in the case law of this state is of particular importance because the City of Menasha is bound not only by the statutory definitions above but also by legal precedent should its determination of blight be challenged in a court of law after Monday’s meeting. Two recent cases are particularly useful in expanding the statute’s definition of “blight.”

In *English Manor Bed and Breakfast v. Great Lakes Cos.*, 2006 WI App 91, 292 Wis. 2d 762, 716 N.W.2d 531, the City of Sheboygan and its redevelopment authority obtained a declaration of blight for purposes of taking certain lakefront property and replacing it with a tourist resort and convention center. *Id.* at ¶ 2. The blighted property in that case consisted of a forty-two acre abandoned warehouse and surrounding land that had been used for approximately one hundred years prior to the blight determination for the storage of coal, petroleum, salt, and fertilizer. *Id.* The property was abandoned at the time the redevelopment authority stepped in to implement proposed projects in the area. *Id.* at ¶¶ 2, 4.

Likewise, in *Grunwald v. Community Development Authority*, 202 Wis. 2d 471, 551 N.W.2d 36 (Ct. App. 1996), the owner of rental property in an older neighborhood in the City of West Allis challenged the city development authority’s finding that his property and the surrounding neighborhood were blighted. The blighted area in that case consisted of a mix of older residences and business structures, all between the ages of 70 to 90 years old. Testimony at the time of trial indicated that many of the buildings were falling into disrepair, contained dangerously dry wood, and were not compliant with current building codes. *Id.* at 483-84. Land use was described as “overly intense” with buildings on some lots covering so much of the lot space that side yards, front setbacks, and off-street parking were all but totally eliminated. *Id.* at 484. The court noted that “street and traffic patterns were outdated, and vacant lots tended to attract refuse and garbage.” *Id.* Various

other witnesses revealed that the entire area constituted a fire hazard “because the wood-frame buildings were built on or close to property lines, allowing a fire to move easily from building to building,” further noting that “light and ventilation problems” were present in many of the homes.” *Id.* One witness testified that, in his opinion, “seventy-five percent of the properties were classified as blighted because they were older, deteriorating buildings” and that the redevelopment area as a whole “presented a very beaten down image” *Id.*

The attached photographs of the Lake Park Villas area contrast starkly with the above images of dilapidation, abandonment, filth, and disuse, as well as with the statutory definition of “blight” that was selectively quoted in the Memorandum submitted by the City of Menasha. According to the complete definition contained in the Wisconsin Statutes and quoted above, the property in question in no way meets the definition of “blighted property.” Taking the statutory definition clause by clause, and comparing it to the attached images of the area in question, it is impossible to reconcile the two and to conceive of the Lake Park Villas area as blighted property.

- “. . . which by reason of dilapidation, deterioration, age or obsolescence” Wis. Stats. § 66.1333(2m)(b)1. Contrary to this statutory language, all of the residences and other buildings pictured in the “blighted” area are new, well kept, and attractive. (See attached Exhibits 1-24.) The City cites the two silos and garage, both pictured in the attached exhibits, as evidence of obsolescence. However, the two silos were originally considered by the City and a previous developer to benefit the property by adding to its rural, picturesque character. In addition, the City has contracted with The Ponds of Menasha to remove these silos from the property entirely, so any issue of obsolescence created by their presence on the property will be eliminated under the Development Agreement. The garage is pictured in Exhibit 10 and is, likewise, attractive and well kept without so much as any chipped paint. There is no indication of obsolescence of the kind described in the cases above, where abandoned warehouses can no longer be used for their intended purposes and where the very street layout of the neighborhood has become dated and inefficient. The only additional obsolescence cited by the City is outdated platting. However, the City can plat land regardless of whether said land is blighted. The fact that the City's platting is “obsolete” is therefore totally irrelevant to the issue of whether this property is blighted.
- “. . . inadequate provision for ventilation, light, air, sanitation, or open spaces” Wis. Stats. § 66.1333(2m)(b)1. All pictured buildings demonstrate ample provision for ventilation, light, air, and sanitation. None of them show the type of “overly intense” land use described in *Grunwald* that could create problems with light and air circulation but rather are new, attractive, upscale-looking homes with windows looking out onto surrounding ponds, bridges, open areas, and even silos. (See Exhibits 9-24) To describe this property as lacking in appropriate sanitation would be disingenuous as, unlike the empty lots in *Grunwald*, there is no litter visible in any of the photos, and to describe it as lacking in “open spaces” would be totally ludicrous. The attached exhibits show well designed neighborhoods with open spaces included as part of the design in the form of ponds, bridges, and park areas. (See *id.*)
- “. . . high density of population and overcrowding” Wis. Stats. § 66.1333(2m)(b)1. The high level of open space demonstrated in the photographs precludes any concern that there is a high density of population or overcrowding in this area and contrasts once again with the statutory definition of blight.
- “. . . or the existence of conditions which endanger life or property by fire and other causes” *Id.* The pictured property consists of newer buildings, all appearing to be well constructed and well cared for with no signs of older buildings of the type that might contain dry wood or faulty electrical wiring. The neighborhoods appear to be designed with the intent of providing

ample space between each dwelling such that concerns of the type raised in *Grunwald* about fire spreading from one building to another are alleviated. In addition, the surrounding land is well tended and dotted with scenic ponds and walkways; not likely to be a fire hazard or the type of area that endangers life or property by other causes.

- “. . . is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, *and* is detrimental to the public health, safety, morals or welfare” Wis. Stats. § 66.1333(2m)(b)1. A well kept neighborhood filled with single-family residences and several small businesses (one of which even appears to be a day care of some sort with a playground in the yard) is unlikely to lead to the above detriments, including increased crime and the transmission of disease that might be cause for concern in a truly dilapidated neighborhood where unsanitary conditions abound.
- “. . . defective or inadequate street layout” Wis. Stats. § 66.1333(2m)(b)2. The street layout, while criticized by the City in its Memorandum, appears modern and efficient when viewed in the attached photographs. (*See* Exhibits 2-9; 18-20.) The area has several roundabouts, currently believed to be the most efficient way of directing traffic flow and one of the most current ways of laying out intersections. The streets and curb work appear new and are in good repair, contrary to assertions in the City’s Memorandum.
- “. . . faulty lot layout in relation to size, adequacy, accessibility or usefulness” *Id.* Lot layout is similarly current and well designed. (*See, e.g.,* Exhibits 2-6.) This statutory language refers to the type of faulty lot layout described in *Grunwald*, where buildings consumed so much of each lot that they were dangerously close to one another and to the street. Each of the buildings visible in the attached exhibits is comfortably set back from the street and adequately removed from neighboring buildings such that faulty lot layout is not a concern. The type of platting issues described by the City in its Memorandum hardly constitute faulty lot layout or a basis for declaring “blight,” as platting can be revisited by the City without the necessity of declaring the area “blighted” beforehand.
- “. . . unsanitary or unsafe conditions” Wis. Stats. 66.1333(2)(b)2. *See* above.
- “. . . deterioration of site or other improvements” *Id.* The buildings appear to be relatively new, and even those specifically criticized in the City’s Memorandum (i.e., the silos and garage) are well tended and add to the character of the property. The fountains pictured all appear to be operating as intended and the ponds are free of litter, are landscaped, and appear well maintained. (*See, e.g.,* Exhibits 1-3, 5, 8-9, 11, 21-24.)
- “. . . diversity of ownership” *Id.* The property pictured is owned by multiple owners—several single families, some small businesses, and the developer interested in the entire “blighted” area.
- “. . . tax or special assessment delinquency exceeding the fair value of the land” *Id.* The City does not cite any such problem as one of its reasons for seeking this blight determination, and, upon information and belief, no such issue exists with respect to the subject property.
- “. . . defective or unusual conditions of title” *Id.* The only unusual conditions of title are that at least one private property owner in the proposed blighted area does not wish to relinquish title to the City, particularly where there is no evidence whatsoever that the area is blighted.
- “. . . the existence of conditions which endanger life or property by fire and other causes” *Id.* *See* above.
- “. . . substantially impairs or arrests the sound growth of a city, retards the provision of housing accommodations or constitutes an economic or social liability *and* is a menace to the public health, safety, morals, or welfare in its present condition and use.” *Id.* (emphasis added). The presence of “and” in this clause makes it especially impossible for the City to

show that this particular statutory condition is satisfied. The City appears to set forth an argument in its Memorandum that the “blighted” area is impeding the growth of the City of Menasha by virtue of the fact that real estate prices have declined in recent years; however, nowhere does the City suggest that the area in question constitutes a menace to the public health, safety, moral, or welfare in its present condition, and the attached exhibits would seem to refute such a contention were it to be set forth by the City. Furthermore, real estate prices throughout the area have been reduced in recent years. Real estate does not become blighted simply because its value has declined. If that were the case, the entire City could likely be subject to a finding of blight.

Wis. Stats. Ch. 32

In light of the above, the City could not satisfy its burden of demonstrating blight if a determination of blight is challenged in court. The Redevelopment Authority and/or Council should find that the area of Lake Park Villas and vicinity is not blighted, given that it does not even come close to embodying the definitions and descriptions provided in the Wisconsin Statutes and case law. Nonetheless, it is important to note that, even if the area of Lake Park Villas is to be “blighted” under Chapter 66, Wis. Stats., the City Council could not satisfy the conditions of Chapter 32, Wis. Stats.

In order to take private property from its owner (including blighted property), the City would be required to comply with Chapter 32 of the Wisconsin Statutes regarding eminent domain. Specifically, the City would be required to satisfy a court of law that the property in question is blighted, not only as defined in Chapter 66, but also as defined in Chapter 32. See Wis. Stats. § 32.03(6)(a). Chapter 32 did not contain its own definition of blight until 2005, when the legislature added subsection (6) in response to the U.S. Supreme Court’s decision in *Kelo v. City of New London*, 545 U.S. 1158, 126 S. Ct. 24 (2005). The Court’s decision in that case would have given city redevelopment authorities expanded authority to take privately owned property in blighted areas, and the decision created such an outcry that the legislatures of many states quickly amended their statutes to prohibit such takings. In Wisconsin, the legislature added a separate definition of blight to Chapter 32, and although this definition is similar to the one found in Chapter 66, it is more narrow and must be construed strictly in favor of the private property owner, not the City. The legislative history and purpose behind Section 32.03(6)(a), make it clear that the property in and around Lake Park Villas cannot meet the statutory definition of blight.

Conclusion

In light of the scant factual support contained in the City’s Memorandum for its requested finding of blight, the City’s motives in seeking said blight determination are questionable. It appears, however, that the City of Menasha has entered into an agreement with a new developer regarding the property in question and wishes to obtain Lot 16. If the City intends to use a blight determination to accomplish such goal, it will face significant statutory and constitutional challenges.

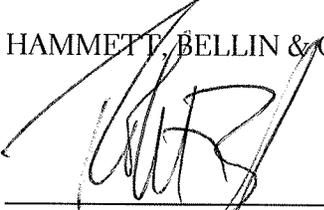
Furthermore, the blight determination is in no way necessary for furtherance of the City’s objectives. There is already a Resolution approving TID No. 12 encompassing Lake Park Villas. Also, the developer has shown interest in all of the property surrounding Lot 16, which said developer can still use for its intended purposes without disturbing privately held property. This is particularly true where said privately held property is owned by individuals who operate a business on a separate lot in the Lake Park Villas neighborhood—one which generates tens of thousands of dollars each year for

the City in tax revenue and electric utility payments. If the current owners, the Schankes, continue to own Lot 16, the property will eventually be developed by them and will, in all likelihood, result not only in additional tax revenue but also in the growth and prosperity for neighborhood and community so desired by the City of Menasha. Failure to complete Phase IV (Lot 16) of the City's agreement with the Ponds of Menasha, LLC would have no effect on the development of the other property in Phase I-III. Wisconsin law requires that "the acquisition of property [be] reasonably necessary for the elimination of [] blight" before private property can be taken. Sigma Tau Gamma Fraternity House v. Menominee, 93 Wis. 2d 392, 409, 288 N.W. 2d 85 (1980). Lot 16 is unnecessary and should therefore be excluded from any blight determination made by the City.

Based upon all of the above, Mr. Schanke respectfully submits that the Redevelopment Authority and/or Council must decline to find Lake Park Villas and surrounding area blighted under Section 66.1333(2m) of the Wisconsin Statutes.

Submitted by:

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On behalf of:

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Exhibit 1



Exhibit 2



Exhibit 3



Exhibit 4



Exhibit 5



Exhibit 6

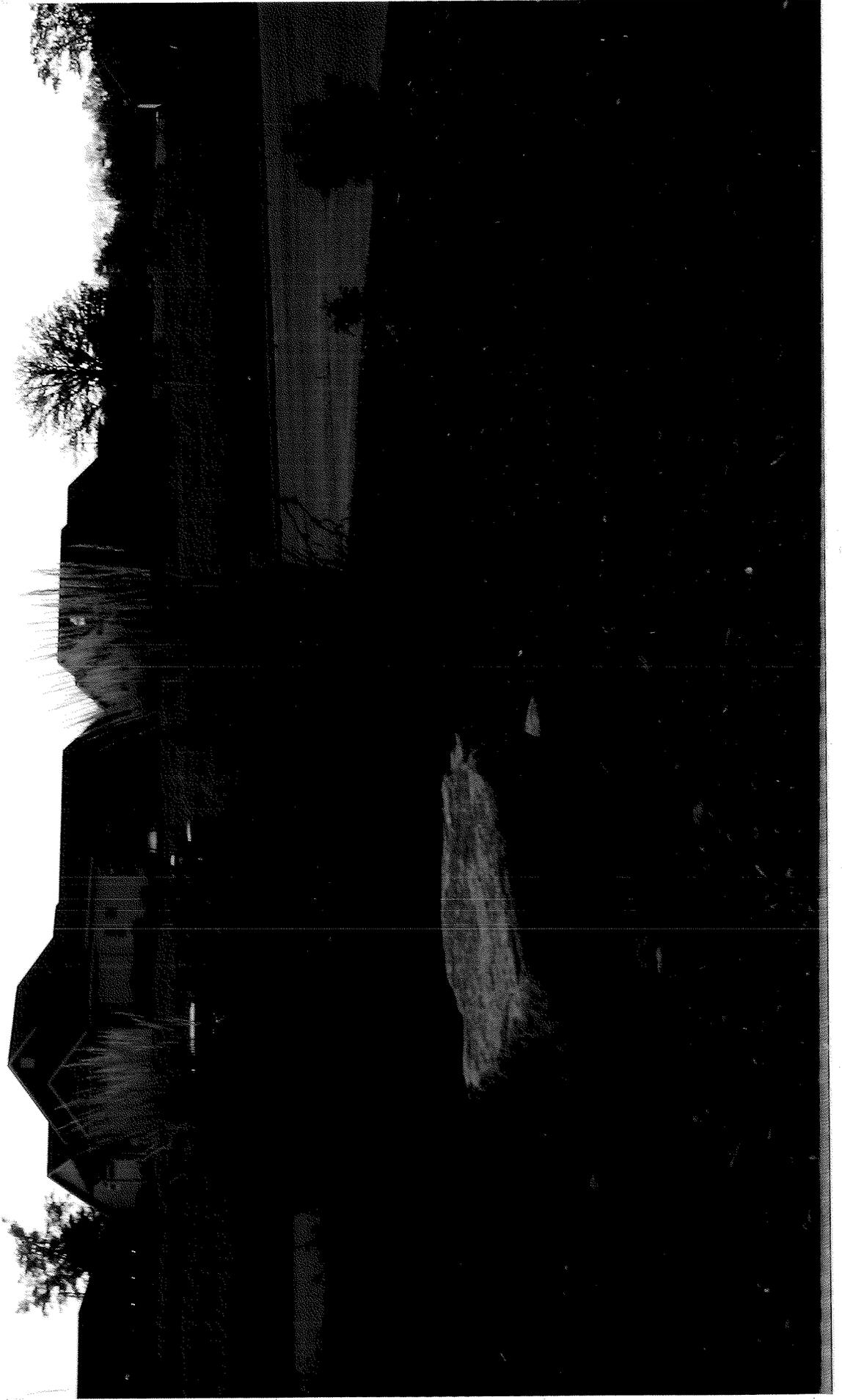


Exhibit 7



Exhibit 8



Exhibit 9



Exhibit 10



Exhibit 11



Exhibit 12

LOT
25



Exhibit 13



Exhibit 14



Exhibit 15



Exhibit 16



Exhibit 17



LOT
109

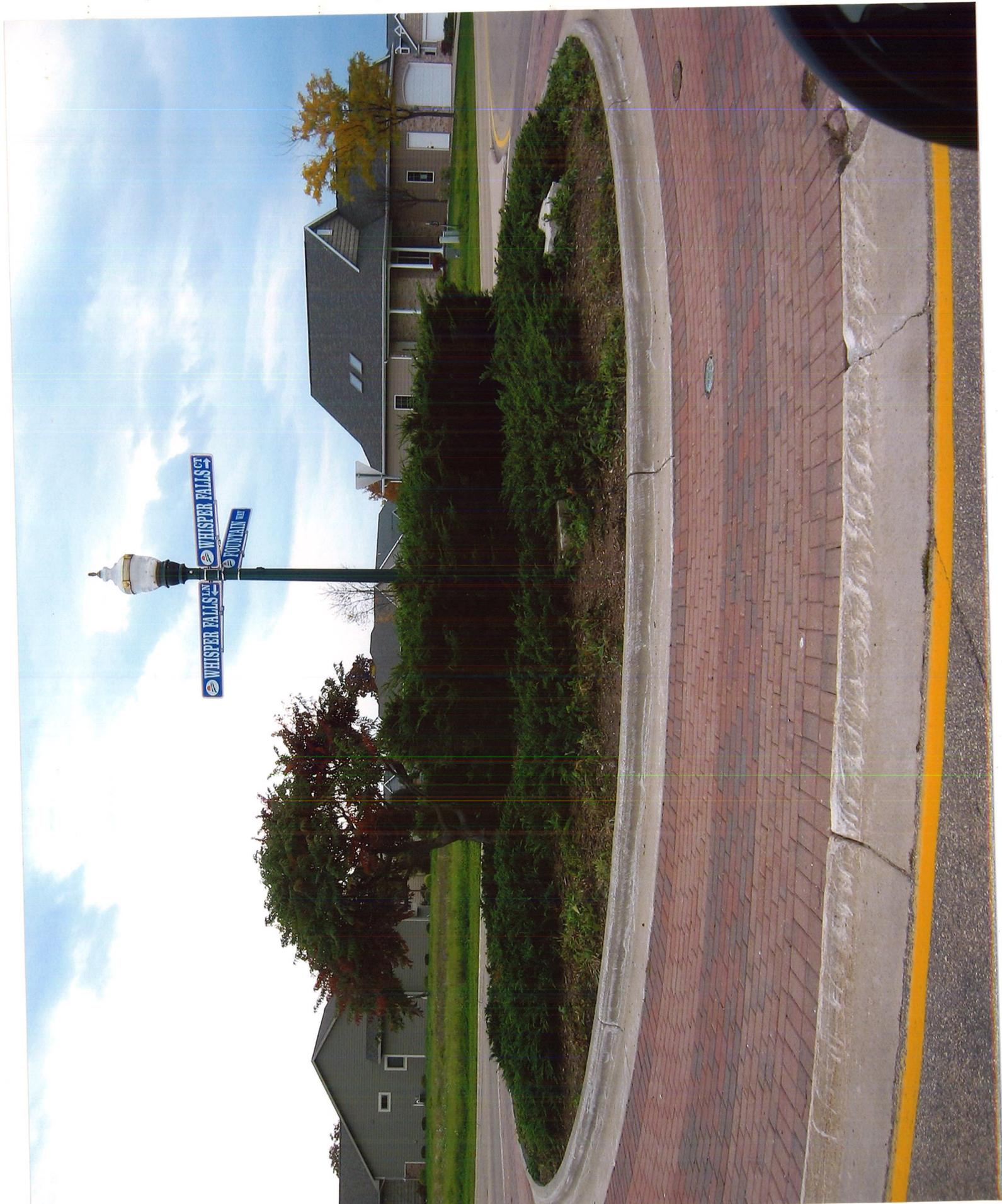
Exhibit 18



WHISPER FALLS

GEORGETOWN PL

Exhibit 19



WHISPER FALLS LN

FOUNTAIN DR

WHISPER FALLS LN

Exhibit 20



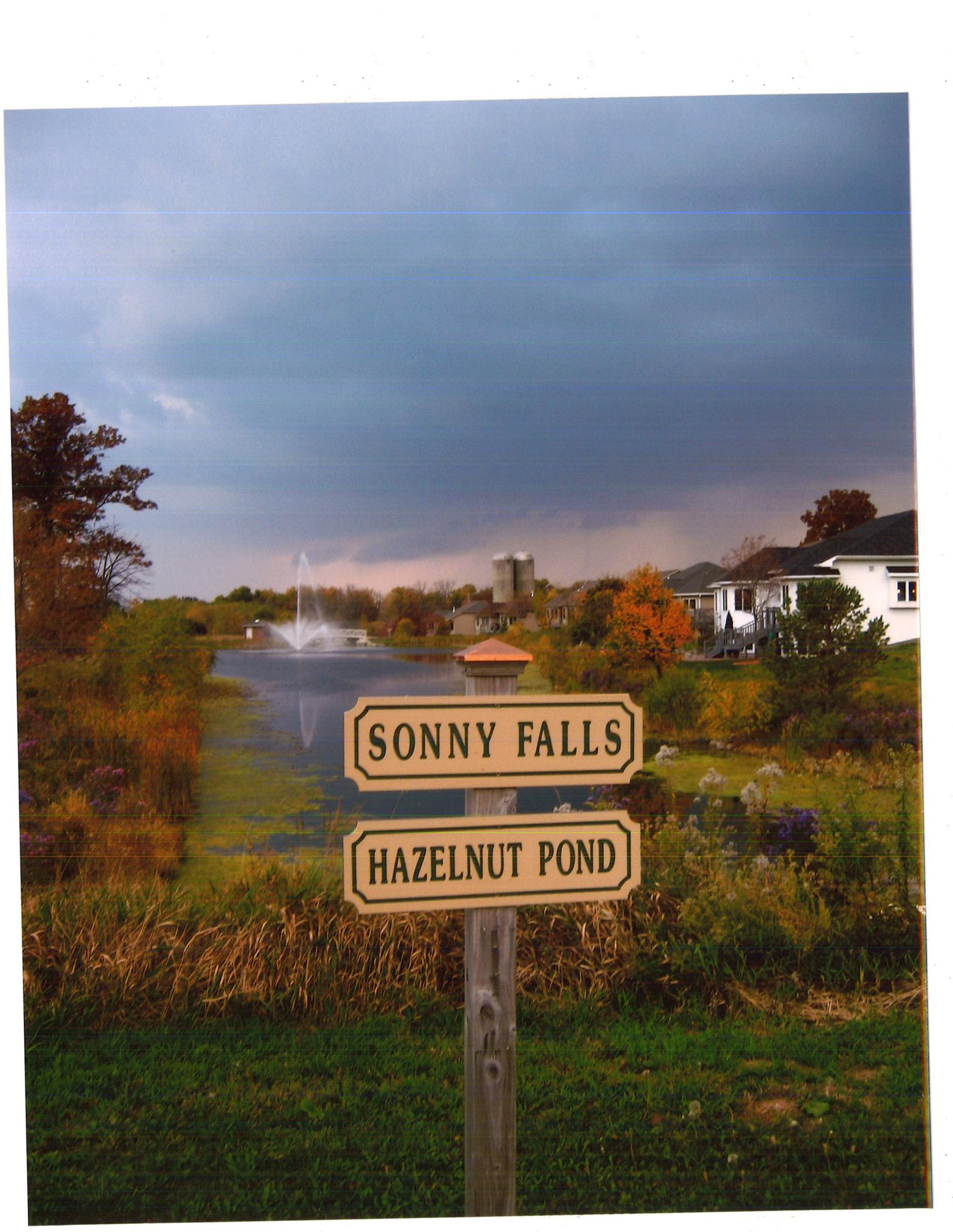
Exhibit 21



FOUNTAIN WAY

GEORGETOWN PT.

Exhibit 22

A photograph of a residential area featuring a pond with a fountain. In the foreground, a wooden signpost holds two signs. The background shows houses, a silo, and trees under a cloudy sky.

SONNY FALLS

HAZELNUT POND

Exhibit 23



BUTTERNUT POND

Exhibit 24

