

ORDINANCE NO. 10-01-07-01

An Ordinance Repealing Ordinance No. 8-2-99-1 and Creating Section 18-103 and 18-34 for the Wellhead Protection Overlay Zoning District.

WHEREAS, the Village Board for the Village of Fontana does hereby find that the groundwater aquifers underlying the Village are the exclusive source of the Village's existing and future water supplies; and

WHEREAS, the Village Board for the Village of Fontana-on-Geneva Lake (hereinafter "Village") does further find that adverse land use practices, adverse land development or depletion of water resources can have a significant adverse effect on the groundwater aquifers underlying the Village; and

WHEREAS, it is in the interest of the health, safety, and the general welfare of the residents of the Village of Fontana-on-Geneva Lake to protect, preserve, and maintain existing potential groundwater supplies and groundwater aquifers underlying the Village and groundwater aquifer recharge areas within the Village by regulating the uses of land within the Village.

NOW, THEREFORE, the Village Board of the Village of Fontana-on-Geneva Lake, Walworth County, Wisconsin, does ordain as follows:

SECTION 1

Ordinance No. 8-2-99-1 of the Village of Fontana-on-Geneva Lake is hereby repealed in its entirety.

SECTION 2.

Section 18-103 of the Municipal Code of the Village of Fontana-on-Geneva Lake is hereby created, as follows:

Wellhead Protection Overlay District

This district is intended to provide a means for regulating potentially adverse land use practices and adverse land development within the Wellhead Protection Overlay Zoning District. Please refer to Section 18-34 for the procedures applicable to land use activities within this overlay district.

SECTION 3.

Section 18-34 of the Municipal Code of the Village of Fontana-on-Geneva Lake is hereby created, as follows:

18-34 Wellhead Protection Overlay Zoning District Procedures

(1) Purpose:

- (a) Residents in the Village of Fontana-on-Geneva Lake depend exclusively on groundwater from groundwater aquifers underlying the Village for a safe water supply. Certain land use practices and activities can seriously threaten or degrade groundwater quality. The purpose of the Wellhead Protection Overlay District is to establish land use regulations and restrictions in order to protect the Village's water supply and well fields, and to promote the health, safety and general welfare of the residents of the Village.
- (b) Statutory authority of the Village to enact these regulations was established by the Wisconsin Legislature in ss.62.23(7)(a) and (c), Wis. Stats. Under these statutes, the Village has the authority to enact this ordinance, effective within the incorporated areas of the Village.

(2) Definitions:

- (a) Clean-up Costs: All costs directly associated with the release of contaminants in violation of the ordinance, including, but not limited to, the cost of any consultants or professionals hired by the Village or Village employees, the cost of contractors hired by the Village or Village employees, Village costs for oversight, review, documentation and administration of a clean-up effort, and all costs incurred by the Village in prosecuting an alleged violation of this ordinance or in bringing a court action for injunctive or other legal relief as provided for in this ordinance.
- (b) Discharge: Any intentional or unintentional action or omission, unless pursuant to and in compliance with the conditions of a valid and effective Federal or State Permit, resulting in the releasing, spilling, pumping, pouring, emitting, emptying, or dumping of a regulated substance into the waters or lands of the State.
- (c) Hazardous Chemicals: The phrase "hazardous chemicals" shall mean those chemicals identified by OSHA Criteria under 40 CFR Part 370.
- (d) Person: Any individual, public or private corporation, company, partnership, firm, association, owner or operator, political subdivision of this State, and any state, Federal or interstate agency or an agent or employee thereof.
- (e) Regulated Substances: Chemicals and chemical mixtures that are or may be health hazards. Health hazards for chemicals and chemical mixtures are typically identified on Material Safety Data Sheets (MSDS) available from the substance manufacturer or supplier. Substances packaged for consumption by humans or animals are not considered Regulated Substances. Regulated substances include, but are not limited to, the following:
 - (i) Chemicals for which there is scientific evidence that acute or chronic health effects may result from exposure, including carcinogens, toxic and highly toxic agents, irritants, corrosives,

sensitizers, hepatotoxins, agents that act on the hematopoietic system, reproductive toxins, and agents which damage the lungs, skin, eyes, or mucous membranes as defined in 29 CFR 1910.1200, Appendix A, "Health Hazard Definitions (Mandatory)", and any future amendments thereto.

- (ii) Mixtures of chemicals which have been tested as a whole and have been determined to be a health hazard.
- (iii) Mixtures of chemicals which have not been tested as a whole but which contain any chemical which has been determined to be a health hazard and comprises one (1.0) percent or greater of the composition on a weight per unit weight basis.
- (iv) Mixtures of chemicals which include a carcinogen if the concentration of the carcinogen in the mixture is one tenth of one (0.1) percent or greater of the composition on a weight per unit weight basis.
- (v) Ingredients of mixtures prepared within the Wellhead Protection Overlay Zoning District in cases where such ingredients are health hazards but comprise more than one tenth of one (0.1) percent of the mixture on a weight per unit basis of carcinogenic, or more than one (1.0) percent of the mixture on a weight per unit weight basis if non-carcinogenic.
- (vi) Petroleum and non-solid petroleum derivatives (except non-PCB dielectric fluids used in equipment for transmission of electric power to homes and businesses).

(3) **Designation of Wellhead Protection Overlay Zoning District Boundaries**

The Wellhead Protection Overlay Zoning District shall include property located, in whole or in part, in those areas described in Exhibit "A", attached hereto and incorporated herein by reference, and depicted on the official zoning map for the Village and described thereon as the "Wellhead Protection Overlay Zoning District".

(4) **Permitted Uses**

Subject to the limitation on available uses set forth in the underlying, basic zoning district, the following are exclusive permitted uses within the Wellhead Protection Overlay Zoning District, subject to the separation distances requirement set forth at Section 18-34(9)(b) herein:

- (a) Public and private parks, playgrounds and beaches, provided there are no on-site wastewater disposal systems or holding tanks.
- (b) Wildlife and natural and woodland areas.
- (c) Biking, hiking, skiing, nature, equestrian and fitness trails.
- (d) Municipally sewered residential development.
- (e) Routine tillage, planting, and field management operations in support of agricultural crop production subject to the regulations set forth at Section 24.915(9)(c) herein.

- (f) Residential use of above ground LP gas tanks for heating, not to exceed 1,000 gallons.
- (g) Commercial and industrial establishments that are municipally sewered and whose aggregate use, storage, handling and/or production of Regulated Substances does not exceed twenty (20) gallons or one hundred and sixty (160) pounds at any time.

(5) **Conditional Uses**

Subject to the limitation on available uses set forth in the underlying, basic zoning district, the following are conditional uses within the Wellhead Protection Overlay Zoning District, subject to the separation distance requirement set forth at Section 18-34(9)(b) herein:

- (a) Nurseries for ornamental plants, green houses, and associated retail sales outlets.
- (b) Pesticide and fertilizer storage and use associated with a Permitted Use or Conditional Use.
- (c) Golf courses.
- (d) Commercial and industrial establishments that are municipally sewered and whose aggregate use, storage, handling and/or production of Regulated Substances does exceed twenty (20) gallons or one hundred and sixty (160) pounds at any time.
- (e) Subject to the prohibition against underground storage tanks set forth herein, motor vehicle services, including service stations, automobile repair, renovation and automobile body working.

(6) **Conditional Use Procedure**

In addition to those procedures set forth more specifically in the Village zoning code, any conditional use application for a use listed in this section 18-34 shall first be submitted for review and an advisory, non-binding recommendation by the Wellhead Protection Review Committee to the Plan Commission. For purposes of this ordinance, the Wellhead Protection Review Committee shall be comprised of the Village Director of Public Works, Village Engineer, and the Village Administrator. The Wellhead Protection Review Committee may establish written procedures not inconsistent with the terms of this Ordinance governing their role in the conditional use process; provided, however that the following requirements shall be met for all conditional use permits issued for conditional uses listed in this Wellhead Protection Overlay Zoning District and to be undertaken within the boundaries of the Wellhead Protection Overlay Zoning District:

- (a) No conditional use permit shall be issued for any conditional use listed in the Wellhead Protection Overlay Zoning District without first obtaining an advisory recommendation by the Wellhead Protection Review Committee.
- (b) The Wellhead Protection Review Committee shall make its recommendation within 30 days following receipt of both an application for a conditional use permit and all information deemed necessary by the Wellhead Protection Review Committee in order to render a decision.

(7) **Prohibited Uses**

All uses not otherwise listed as a Permitted Use in Section 18-34(4) herein or listed as a Conditional Use pursuant to Section 18-34(5) herein shall be prohibited uses within the Wellhead Protection Overlay Zoning District, including, but not limited to, the following uses:

- (a) Cemeteries.
- (b) Chemical manufacturers.
- (c) Coal storage.
- (d) Industrial lagoons and pits.
- (e) Landfills and any other solid waste facility, except post-consumer recycling.
- (f) Manure and animal waste storage.
- (g) Mining; including sand and gravel pits.
- (h) Pesticide and fertilizer dealership, pesticide and fertilizer transfer facility or pesticide and fertilizer storage facility not incidental to a permitted use or an approved conditional use.
- (i) Railroad yards and maintenance stations.
- (j) Rendering plants and slaughterhouses.
- (k) Salt or deicing material storage.
- (l) Salvage or junk yards.
- (m) Septage or sludge spreading, storage or treatment.
- (n) Septage, wastewater, or sewage lagoons.
- (o) Private on-site wastewater treatment systems or holding tanks.
- (p) Stockyards and feedlots.
- (q) Stormwater filtration basins without pre-treatment, including vegetative filtration and/or temporary detention.
- (r) Wood preserving operations.
- (s) Underground hydrocarbon, petroleum or hazardous chemical storage tanks.
- (t) Dry cleaners.

(8) **Requirements for Existing Facilities Which May Cause or Threaten to Cause Environmental Pollution**

- (a) Existing facilities within the Groundwater Protection Overlay District at the time of enactment of such district which may cause or threaten to cause environmental pollution include, but are not limited to, The Wisconsin Department of Natural Resources draft or current list of *'Inventory of Sites or Facilities Which May Cause or Threaten to Cause Environmental Pollution'*, Wisconsin Department of Commerce's list of underground storage tanks, list of facilities with hazardous solid waste permits, and all other facilities which are considered a prohibited use in Prohibited Uses, Section 18-34(7), or a conditional use in Conditional Uses, Section 18-34(6), all of which are incorporated herein as if fully set forth:
 - (i) Such facilities as above cannot engage in or employ a use, activity or structure listed in Prohibited Uses, Section 18-34(7), or in

Conditional Uses, Section 18-34(6), which they did not engage in or employ at the time of enactment of a district and can only expand, replace or rebuild those present uses, activities, equipment or structures on the site or property of record associated with the facility at the time of enactment of a district, and in a manner that improves the environmental and safety technologies already being utilized. No existing use, activity or structure listed as a prohibited use or conditional use shall be expanded, replaced or rebuilt unless a conditional use permit is granted for such expansion, replacement or rebuilding. This section does not apply to normal maintenance or minor repairs.

(9) **Additional Regulations Within the Wellhead Protection Overlay Zoning District**

(a) **Spills, Leaks or Discharges**

(i) No person shall intentionally or negligently discharge or cause the discharge of a Regulated Substance within the Wellhead Protection Overlay Zoning District.

(ii) In addition to any reporting requirement imposed by State or Federal law, any person with direct knowledge of a spill, leak or discharge of a Regulated Substance, within the Wellhead Protection Overlay Zoning District shall, if such spill, leak or discharge escapes containment or contacts a non-impervious ground surface and is not immediately and completely remediated, give notice to the Village Fire Department utilizing the county wide 911 service and give notice to the Village Director of Public Works of the Village by telephone within thirty (30) minutes. The notification shall include at a minimum, the location of the incident, name and telephone number of the contacting party, date and time thereof, type of substance(s), concentration and volume, and control or corrective action taken.

(iii) Any entity or person who spills, leaks or discharges said substance(s) shall be liable for any reasonable expense, loss or damages incurred by the Village in response to such an incident, in addition to the amount of any fines imposed on account thereof under State and Federal law; said entity or person shall document and maintain sufficient records so as to reflect accurately the circumstances related to any such incident and develop and implement procedures to substantially eliminate the likelihood of reoccurrence of such spills, leaks or discharges as soon as practicable following the incident, but no later than one hundred eight (180) days after the incident.

(b) **Separation Distance Requirements.** The separation distance requirement specified in NR 811.16(4)(d) shall be maintained, including, but not limited to the following:

- (i) Fifty feet between a well and a storm sewer main.
 - (ii) Two hundred feet between a well and any sanitary sewer main, sanitary sewer manhole, lift station or single family residential fuel oil tank. A lesser separation distance may be allowed for sanitary sewer mains where the sanitary sewer main is constructed of water main materials and joints and pressure tested in place to meet current AWWA C600 specifications. In no case may the separation distance between a well and a sanitary sewer main be less than 50 feet.
 - (iii) Four hundred feet between a well and a septic tank or soil absorption unit receiving less than 8,000 gallons per day, a cemetery or a storm water drainage pond.
 - (iv) Six hundred feet between a well and any gasoline or fuel oil storage tank installation that has received written approval from the department of commerce or its designated agent under s. Comm 10.10.
 - (v) One thousand feet between a well and land application of municipal, commercial or industrial waste; the boundaries of a landspreading facility for spreading petroleum-contaminated soil regulated under ch. NR 718 while that facility is in operation; industrial, commercial or municipal waste water lagoons or storage structures; manure stacks or storage structures; and septic tanks or soil absorption units receiving 8,000 gallons per day or more.
 - (vi) Twelve hundred feet between a well and any solid waste storage, transportation, transfer, incineration, air curtain destructor, processing, wood burning, one time disposal or small demolition facility; sanitary landfill; any property with residual groundwater contamination that exceeds ch. NR 140 enforcement standards that is shown on the department's geographic information system registry of closed remediation sites; coal storage area; salt or deicing material storage area; gasoline or fuel oil storage tanks that have not received written approval from the department of commerce or its designated agent under s. Comm 10.10; bulk fuel storage facilities; and pesticide or fertilizer handling or storage facilities.
- (c) Excessive Use of Fertilizer. No agricultural crop production shall apply fertilizer in amounts in excess of soil test recommendations produced by the University of Wisconsin or the University of Wisconsin Extension for that field. Such tests shall account for nutrients from existing crops and manure in determining crop nutrient need.

(10) **Enforcement**

- (a) Penalty. Any person who violates, neglects or refuses to comply with any of the provisions of this ordinance shall be subject to a penalty as provided by the Village of Fontana-on-Geneva Lake Municipal Code.

- (b) Injunction. The Village may, in addition to any other remedy, seek an injunction or restraining order against the party alleged to have violated the provisions of this ordinance, the cost of which shall be charged to the defendant in such action.
- (c) Clean-Up Costs. As a substitute for, or in addition to any other action, the Village may commence legal action against both the person who spills, leaks or discharges a Regulated Substance in violation of this ordinance and the owner of the facility whereupon the Regulated Substance was spilled, leaked or discharged to recover the costs of any alleged violation of this ordinance, together with the costs of prosecution. The person who spills, leaks or discharges such Regulated Substances in violation of this ordinance and the person who owns the facility whereon the Regulated Substances have been spilled, leaked or discharged shall be jointly and severally responsible for the cost of clean-up.

SECTION 4.

SEVERABILITY. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holdings shall in no way affect the validity of the remaining portions of this ordinance.


SECTION 5.

EFFECTIVE DATE. This ordinance shall be in full force and on October 11, 2007.

PASSED and ADOPTED by the Village Board of the Village of Fontana-on-Geneva Lake, Walworth County, Wisconsin, this 1st day of October, 2007.

VILLAGE BOARD
OF THE VILLAGE OF FONTANA-ON-GENEVA LAKE

By: 
Ron Pollitt, Village President

Attest: 
Dennis L. Martin, Village Clerk

LEGAL DESCRIPTION
Wellhead Protection Area (Wells 1 & 3)

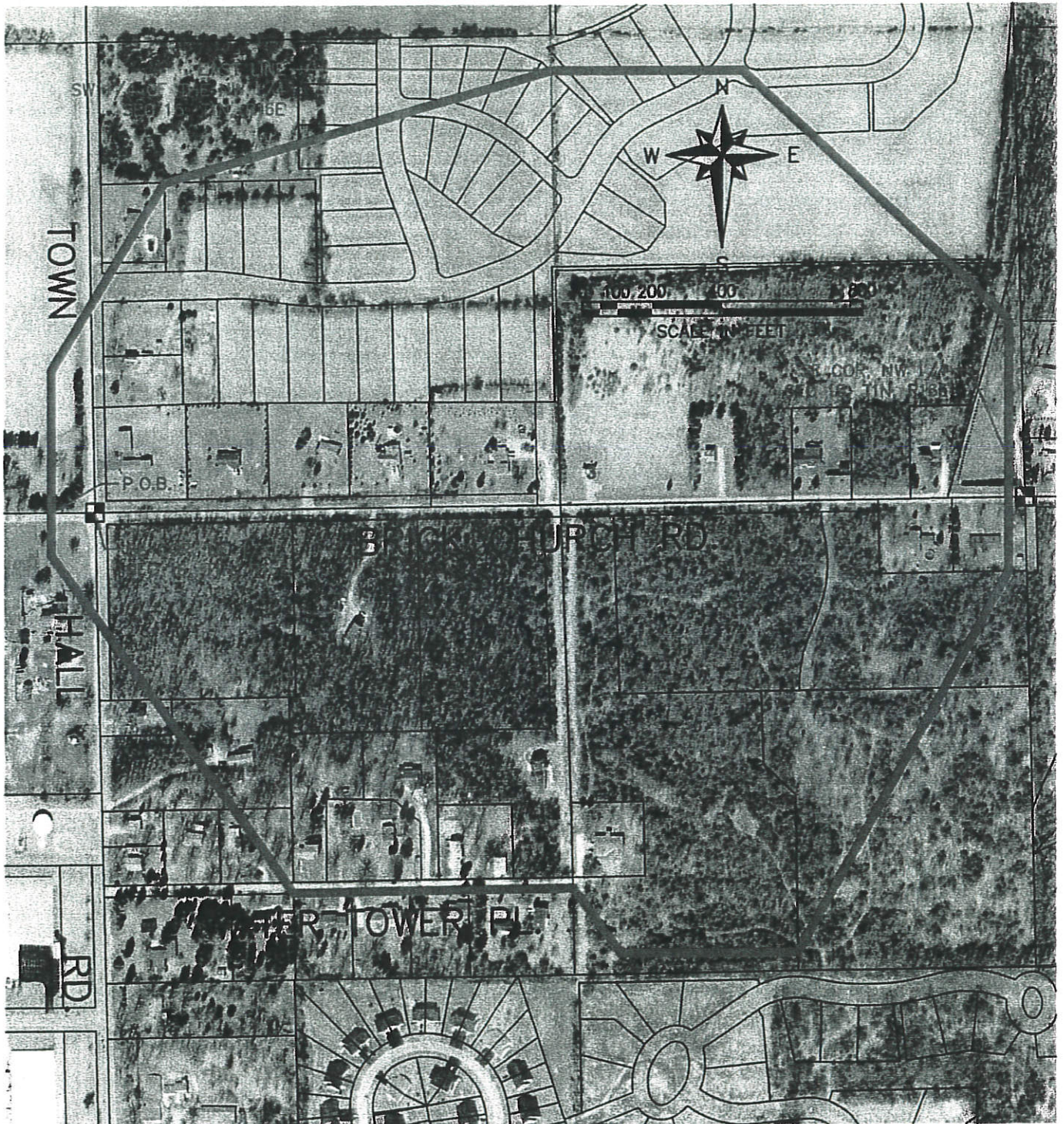
Being part of the Northwest one-quarter and Southwest one-quarter of Section 15 and part of the Northeast one-quarter and Southeast one-quarter of Section 16, all in Town 1 North, Range 16 East, Village of Fontana and the Town of Walworth, Walworth County, Wisconsin, bounded and described as follows (see attached Exhibit "A"):

Commencing at the Southeast corner of the aforesaid Northeast one-quarter of Section 16; thence South $89^{\circ}30'22''$ West along the South line of said Northwest one-quarter of Section 16, 125.00 feet to the point of beginning; thence due North, 400.00 feet; thence Northeasterly, 617 feet more or less to the Northeast corner of Lot 1, Certified Survey Map No. 425; thence Northeasterly, 1143 feet more or less to a point on the East line of the Southwest one-quarter of the aforesaid Northwest one-quarter of Section 15, said point being 100.00 feet South of the Northeast corner of said Southwest one-quarter of the Northwest one-quarter, as measured along said East line; thence due East, 500.00 feet; thence Southeasterly, 1034 feet more or less; thence due South, 500.00 feet to a point on the South line of said Northwest one-quarter of Section 15, said point being 45.00 feet West of the Southeast corner of said Northwest one-quarter of Section 15, as measured along said South line; thence due South, 209 feet more or less to a point on the North line of Lot 3, Certified Survey Map No. 3421; thence Southwesterly, 1227 feet more or less to a point of the West line of Lot 4 of said Certified Survey Map No. 3421, said point being 50.00 feet North of the Southwest corner of said Lot 4, as measured along said West line; thence due West 511.00 feet; thence Northwesterly, 227 feet more or less to a point on the South line of Water Tower Place, said point being the Northeast corner of Lot 1, Certified Survey Map No. 590; thence Westerly along said South line, 795 feet more or less to the Northwest corner of Lot 4, Certified Survey Map No. 209; thence Northwesterly, 1174 feet more or less; thence due North, 120.00 feet to the point of beginning. Subject to covenants, conditions, restrictions and easements of record.

EXHIBIT "A"

WELLHEAD PROTECTION AREA (WELLS 1 & 3)

Being part of the Northwest 1/4 and Southwest 1/4 of Section 15 and part of the Northeast 1/4 and Southeast 1/4 of Section 16, all in Town 1 North, Range 16 East, Village of Fontana and the Town of Walworth, Walworth County, Wisconsin.



 **Ruekert-Mielke**
engineering solutions for a working world

PREPARED FOR:
Village of Fontana
175 Valley View Dr.
Fontana, WI 53125

PREPARED BY:
Ruekert-Mielke
W233 N2080 Ridgeview Pkwy.
Waukesha, WI 53188

LEGAL DESCRIPTION
Wellhead Protection Area (Wells 2 & 4)

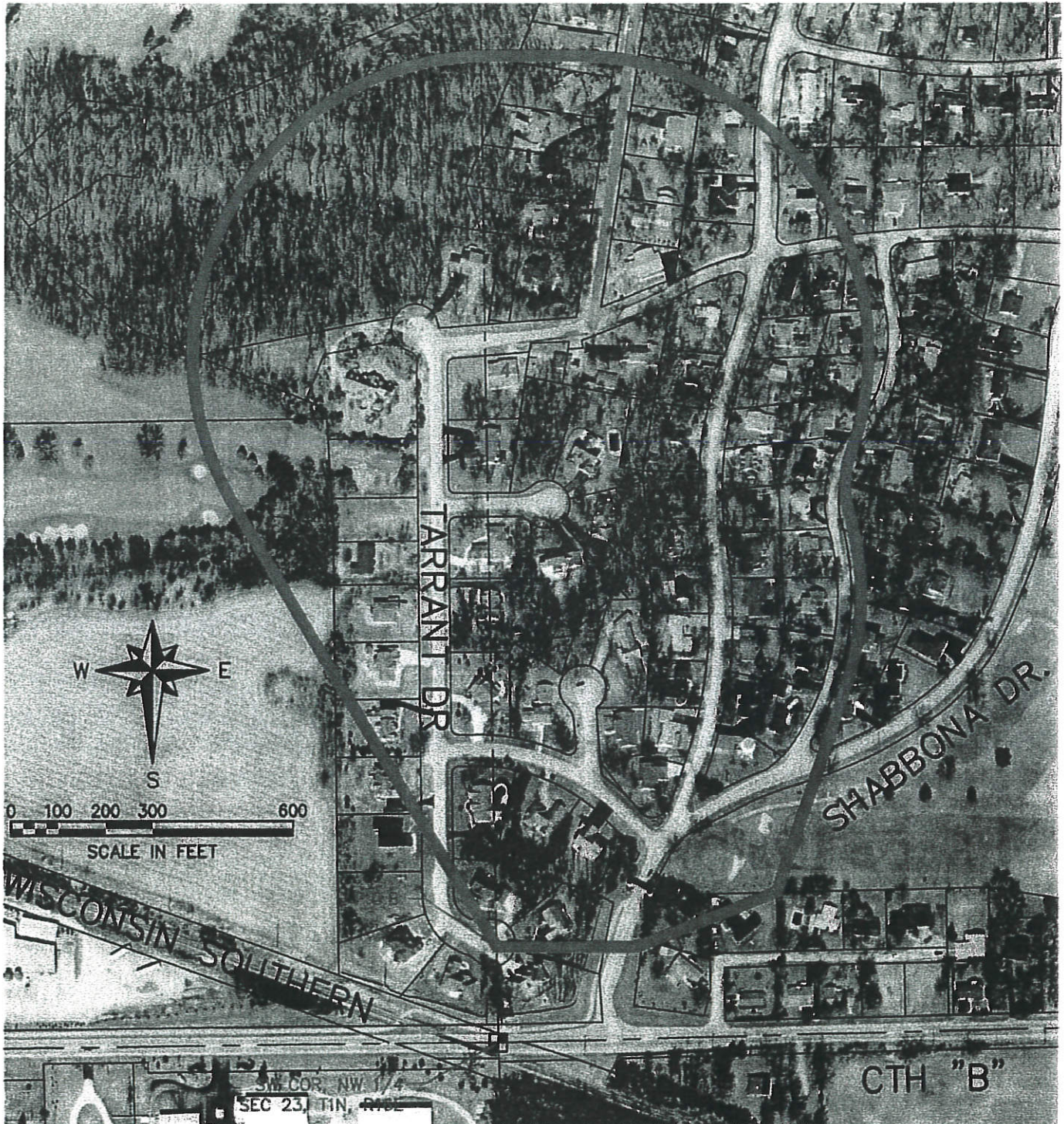
Being part of the Northwest one-quarter of Section 23 and part of the Northeast one-quarter of Section 22, all in Town 1 North, Range 16 East, Village of Fontana and the Town of Walworth, Walworth County, Wisconsin, bounded and described as follows (see attached Exhibit "A"):

Commencing at the Southwest corner of the aforesaid Northwest one-quarter of Section 23; thence North $01^{\circ}08'53''$ West along the West line of said Northwest one-quarter of Section 23, 200.00 feet to the point of beginning; thence due East, 300.00 feet; thence North $68^{\circ}57'19''$ East, 320.26 feet; thence North $18^{\circ}55'48''$ East, 450.85 feet; thence Northeasterly along the arc of a curve to the left, 379.75 feet, radius of 610.00 feet with a chord bearing North $01^{\circ}05'44''$ East for 373.65 feet; thence Northeasterly along the arc of a curve to the right, 127.50 feet, radius of 200.00 feet with a chord bearing North $01^{\circ}31'28''$ East for 125.35 feet; thence Northwesterly along the arc of a curve to the left, 1197.59 feet, radius of 625.00 feet with a chord bearing North $35^{\circ}06'23''$ West for 1022.61 feet; thence due West, 192.52 feet; thence Southwesterly along the arc of a curve to the left, 1320.84 feet, radius of 625.00 feet with a chord bearing South $29^{\circ}27'26''$ West for 1088.40 feet; thence South $31^{\circ}05'08''$ East, 1085.05 feet to the point of beginning. Subject to covenants, conditions, restrictions and easements of record.

EXHIBIT "A"

WELLHEAD PROTECTION AREA (WELLS 2 & 4)

Being part of the Northwest 1/4 of Section 23 and part of the Northeast 1/4 of Section 22, all in Town 1 North, Range 16 East, Village of Fontana and the Town of Walworth, Walworth County, Wisconsin.



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