



GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION
123 West Indiana Avenue, DeLand, Florida 32720
(386) 736-5959

PUBLIC HEARING: May 16, 2019 - Planning and Land Development Regulation Commission (PLDRC)

CASE NUMBER: V-19-045

SUBJECT: A variance to separate nonconforming lots on Urban Single-Family Residential (R-3) zoned property.

LOCATION: 1285 and 1289 East Wisconsin Avenue, DeLand

APPLICANT(S): Raymond A. Biernacki, Jr., attorney for owners

OWNER(S): Glenda Sue Wilson and Donna H. Conerly

I. SUMMARY OF REQUEST

The applicant requests a variance to separate nonconforming lots that were once under common ownership. Both properties are already developed with single-family residences. The requested variance is as follows:

Variance: A variance to Section 72-206(1) nonconforming lots, to separate parcel 7010-00-00-0160 from parcel 7010-00-00-0161.

Staff Recommendation:

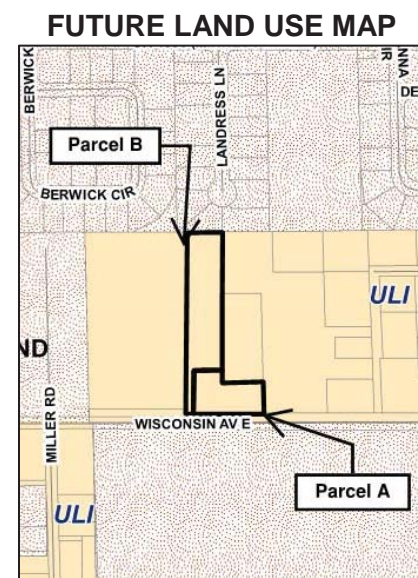
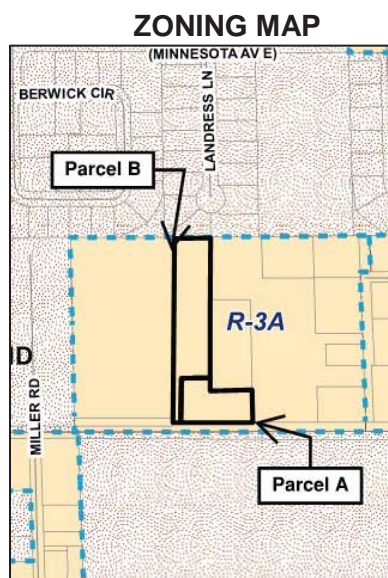
Approve the variance request, case number V-19-045, as the application successfully meets all five criteria for granting said variance.

II. SITE INFORMATION

1. Location: North side of East Wisconsin Avenue, approximately 1,065 feet west of North Blue Lake Avenue, in the DeLand area.
2. Parcel Numbers: 7010-00-00-0160 and 7010-00-00-0161
3. Property Size: ± 0.71 acres and ± 1.54 acres
4. Council District: 1
5. Zoning: Urban Single-Family Residential (R-3)
6. Future Land Use: Urban Low Intensity
7. Overlays: Airport Protection Overlay
8. Local Plan Area: Not Applicable
9. Adjacent Zoning and Land Use:

DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	City of DeLand R-1B (Single-Family Dwelling) and Volusia County R-3	City of DeLand Low Intensity Residential and Volusia County Urban Low Intensity	Single-family residential and vacant woodland
East:	R-3	Urban Low Intensity	Vacant woodland
South:	City of DeLand E-1 (Educational)	City of DeLand Educational	Elementary School
West:	R-3	Urban Low Intensity	Vacant woodland

10. Location Maps:



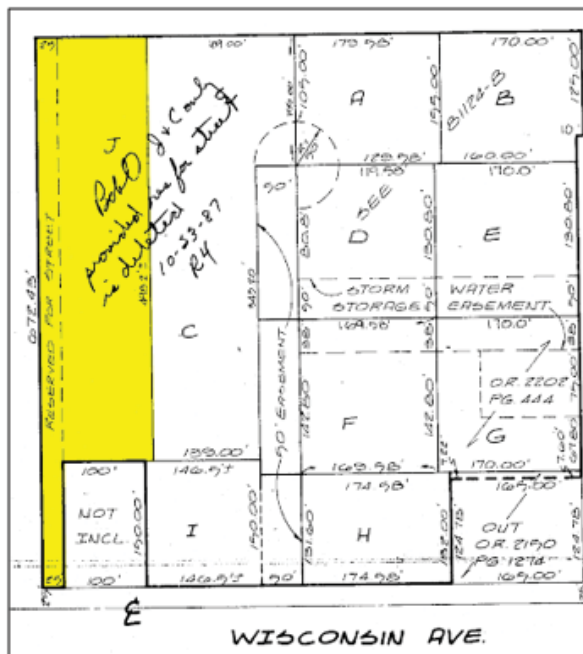
III. BACKGROUND AND OVERVIEW

The subject properties are located on the north side of East Wisconsin Avenue, approximately 1,065 feet west of North Blue Lake Avenue, in the DeLand area. Parcel 7010-00-00-0160 and parcel 7010-00-00-0161, hereinafter referred to as Parcel A and Parcel B, each contain existing single-family dwellings constructed in 1962 and 1988.

The properties are currently zoned R-3, which requires a minimum lot width of 85 feet and a minimum lot area of 10,000 square feet. Parcel A is a conforming parcel, as it meets the minimum lot width and area of the R-3 zoning classification. However, Parcel B is considered a nonconforming parcel as it does not meet the required minimum lot width of the R-3 zoning classification.



Figure 1: Approved Plan of Harden Unrecorded #1779



A nonconforming lot letter prepared by Biernacki & Biernacki P.A., Attorneys at Law, dated March 27, 2019, states that common ownership exists between both parcels since December 17, 2018, as both Parcel A and Parcel B were jointly inherited by sisters from their family members. Pursuant to Section 72-206(1), of the zoning code, nonconforming lots which abut in single ownership are considered to be an undivided lot and no portion shall be sold in a manner which does not comply with the lot width or lot area established by that zoning classification. Therefore, in order for the current owners to sell the properties with clear titles, a variance to this code requirement is necessary.

The current nonconforming configuration of Parcel 2 was approved through a subdivision exemption known as Harden Unrecorded #1779, on October 23, 1987. The zoning classification at that time was Urban Single-Family Residential (R-4), with a minimum lot width of 75 feet. Zoning staff approved the parcel configuration due to measuring the lot width at the building setback line, rather than at the front yard setback, as required by the current zoning code.

The current configuration of Parcel B includes a portion of Lot I, approved through a subdivision exemption known as Harris Unrecorded Subdivision #2 (SD-73-81), and the 100-foot by 150-foot “not included” property depicted in Figure 1. A subdivision exemption is required to approve Parcel B in its current configuration.

As previously stated, two sisters jointly inherited Parcel A and Parcel B from family members. Parcel A, previously owned by their mother, was conveyed to her three daughters through an Order of Summary Administration. The third sister retained a life interest on Parcel B and conveyed the remainder of her interest to her sisters. This sister passed away, and her remaining two sisters became the owners of both Parcel A and Parcel B, as they are today.

IV. REVIEW CRITERIA AND ANALYSIS

Section 72-379(1)a.4, Zoning Code, contains five applicable criteria by which a variance application may be granted. The following staff evaluation is based on these criteria:

i. Special conditions and circumstances exist which are peculiar to the land, structure, sign, or building involved and which are not applicable to other lands, structures, signs, or buildings in the same zoning classification.

The current nonconforming configuration of Parcel B was created by the approval of Harden Unrecorded Subdivision #1779. The proposed variance is an action to correct an oversight in the approval of this subdivision. In addition, there are existing single-family dwellings on both Parcel A and Parcel B. Section 72-206(1), of the zoning code, states that nonconforming lots, which abut in single ownership are considered to be an undivided lot. However, if the parcels are required to stay undivided, the property would not be in compliance with Section 72-280(d), of the zoning code, which states that only one principal structure may be erected on a conforming lot within an Urban Single-Family Residential zoning classification.

Staff finds that this criterion is met.

ii. The special conditions and circumstances do not result from the actions of the applicant.

The current owners obtained joint ownership of both Parcel A and Parcel B by the operation of law through inheritance in 2018. Section 72-280(d), of the zoning code, prohibits the ability to have two principal structures on one parcel. Therefore, neither the special circumstance, nor condition, are the results of actions by the owners.

Staff finds that this criterion is met.

iii. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification, under the terms of the ordinance, and would work an unnecessary and undue hardship on the applicant.

The owners are unable to sell the properties since Parcel B is nonconforming due to lot width and under common ownership with Parcel A. Literal interpretation of the provisions of this ordinance would deprive the applicants of their ability to sell these parcels.

Staff finds that this criterion is met.

iv. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure, or sign.

The variance is the minimum necessary that will make it possible for the applicants to separate Parcel A from Parcel B and sell them separately. It is also the minimum variance that will allow the properties to be eligible for building permits in the future.

Staff finds that this criterion is met.

v. The grant of the variance will be in harmony with the general intent and purpose of this ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10, as amended, and that such variance will not be injurious to the area involved.

There will be no discernable changes to the aesthetics of the property and the variance will not be injurious to the area involved, as Parcel B has existed in this configuration since 1988. Therefore, the variance is harmony with the general intent of this ordinance.

Staff finds that this criterion is met.

V. STAFF RECOMMENDATION

Approve the variance request, case number V-19-045, as the application successfully meets all five criteria for granting said variance, subject to the following condition:

1. A lot line adjustment is required through the subdivision exemption process for Parcel 7010-00-00-0160.

VI. ATTACHMENTS

- Written Petition
- Surveys
- Map Exhibits

VII. AUTHORITY AND PROCEDURE

The commission may, except as otherwise provided in Section 72-379 of the zoning code, authorize, after due public notice upon application on a form prescribed by the zoning enforcement official, such variance or variances from the terms of this ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of this ordinance would result in unnecessary and undue hardship. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the county council.

Any new information to be presented at the planning and land development regulation commission meeting for any application will be grounds to continue an application to the next planning and land development regulation commission meeting. Applicants shall inform and provide staff with the new information prior to the planning and land development regulation commission meeting.

Written Petition

1. The applicant is seeking a separation of lot variance. The applicant would have received a nonconforming lot letter, but for unification of ownership effected by operation of law and an Order of Summary Administration, dated March 26, 2018.

Glenda Sue Wilson ("Wilson") and Donna H. Conerly ("Conerly") own parcel numbers 701000000160 ("Parcel 1") and 701000000161 ("Parcel 2"), which are contiguous. Both parcels were once a single parcel owned by Christine G. Harden. Christine G. Harden is the mother of Wilson, Conerly and Cathy Joann Harden ("Harden"). Christine G. Harden and/or Harden sought Volusia County's permission to divide the single parcel into two parcels and that permission was granted. Volusia County recognizes that date to be March 10, 1988. Attached is a copy of the Certificate of Occupancy for Parcel 2 that was issued by Volusia County on March 10, 1988.

Parcel 2 was conveyed to Harden and she built a residence upon that property. Parcel 2 does not have the required minimum 85 feet width, as interpreted by Volusia County. Parcel 1 had a residence upon it when Parcel 2 was conveyed to Harden.

Christine G. Harden died and an Order Determining Homestead Status of Real Property was entered on March 26, 2018, determining that Wilson, Conerly and Harden each owned an undivided one-third interest in Parcel 1.

Harden executed a Quit Claim Deed on March 27, 2018 wherein she retained a life estate interest in Parcel 2, and conveyed the remainder interest to her sisters, Wilson and Conerly. Harden died on October 28, 2018, at which time Wilson and Conerly became the owners of Parcel 2.

Harden's estate was probated and through an Order of Summary Administration dated December 17, 2018, Wilson and Conerly became the owners of her one-third interest in Parcel 1.

Wilson and Conerly own Parcels 1 and 2 and are requesting a separation of lot variance so that Parcels 1 and 2 are recognized by Volusia County as two separate parcels.

Attached are copies of aerial photos of Parcels 1 and 2, which show the boundary lines of each parcel and the improvements constructed thereon. The photo titled "Wilson" is Parcel 1, and the photo titled "Wilson II" is Parcel 2.

These are the conditions and circumstances that are peculiar to Parcels 1 and 2 that are not applicable to other lands, and these special conditions and circumstances are not the result of action by Wilson and Conerly.

2. A literal interpretation of the zoning ordinance would deprive Wilson and Conerly of rights commonly enjoyed by other properties in the same zoning classification by depriving them of having two lots, and further rendering the properties in violation of the Volusia County zoning ordinances by there being two independent residences on one lot. Because the unification of ownership of Parcel 1 and 2 were not result of voluntary actions of Wilson and Conerly, Volusia County's interpretation of its zoning ordinance poses an unnecessary and undue hardship on Wilson and Conerly.

3. Wilson and Conerly are requesting a separation of lot variance so that the two lots with residences upon them can continue being separate lots as they have been since at least March 10, 1988. The separation of lot variance is the minimum variance that will make possible the reasonable use of Parcel 1 and Parcel 2.

4. The variance request is certainly not inconsistent with the general intent and purpose of the Volusia County Zoning Code Ordinance and Comprehensive Plan. There is nothing about the requested variance that does not promote public health, safety, morals and general welfare, or that does not preserve the character, appearance and aesthetic qualities of Volusia County because the granting of the variance does nothing but preserve the status quo that has existed since at least March 10, 1988.

5. As stated, Wilson and Conerly through this variance request are only seeking to preserve the status quo that has existed since at least March 10, 1988. Having two lots with a residence on each is not in any way injurious to the surrounding area.

Survey - Parcel A 7010-00-00-0160

Boundary Survey

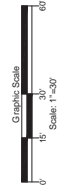
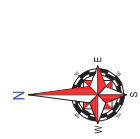
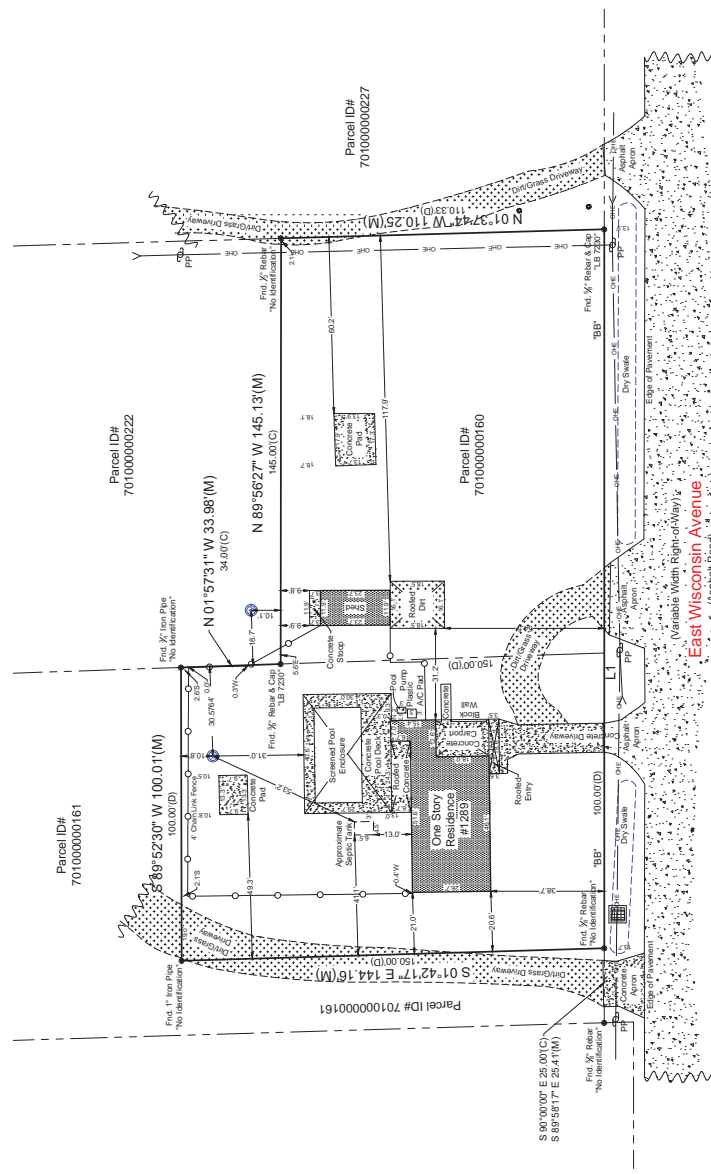
Legal Description:

The East 100 feet of the West 125 feet of the North 175 feet of the South 1/2 of the Northeast 1/4 of the Southeast 1/4 and including the North 110.32 feet of the South 135.32 feet of the South 1/2 of the Northeast 1/4 of the Southeast 1/4, except the East 1044.58 feet and except 125 feet per OR 3762, Pg. 2435, all in Section 10, Township 17 South, Range 30 East, Public Records of Volusia County, Florida.

Flood Disclaimer: Research with the local governing municipality or www.fema.gov, the property appears to be located in zone X. This Property was found in Volusia County, community number 125156, dated 02/19/2014.

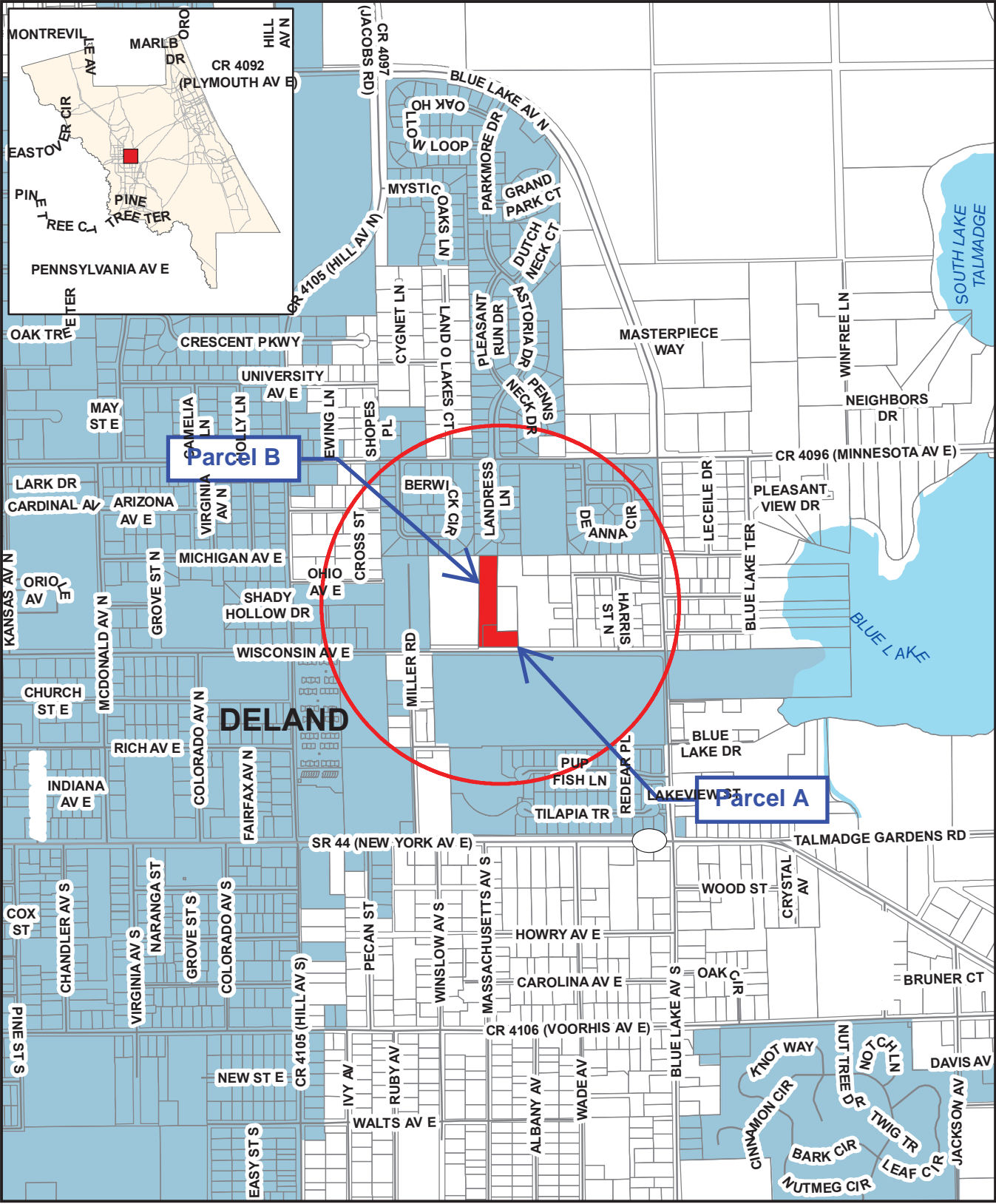
CERTIFIED TO:

MARIO R. DOMINGUEZ LARA: VOLUSIA TITLE SERVICES: CHICAGO TITLE INSURANCE COMPANY: UNITED WHOLESALE MORTGAGE



PROPERTY LOCATION

V-19-045



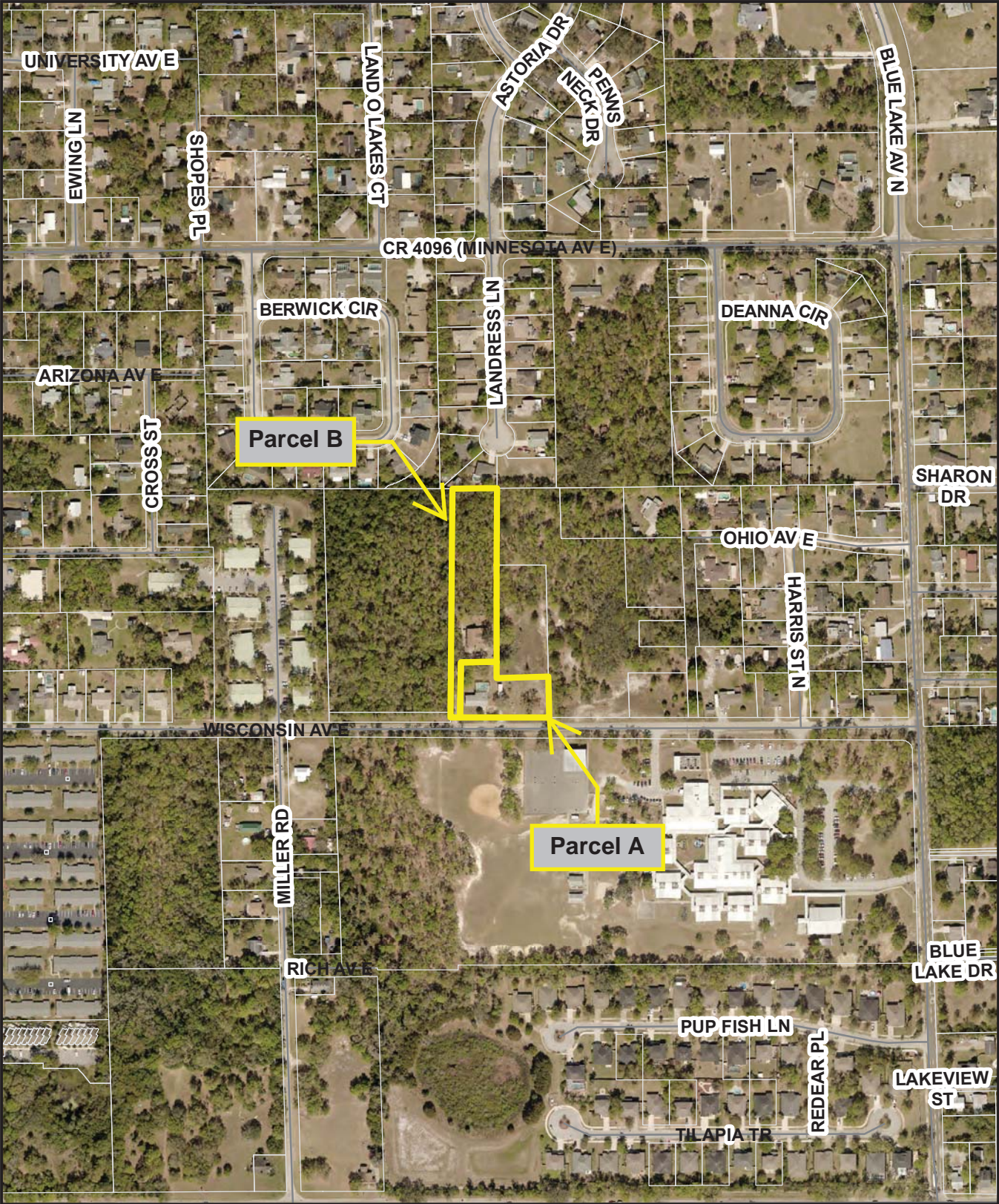
 SUBJECT PROPERTY



1" = 1,000'

3/28/2019

AERIAL
V-19-045



 SUBJECT PROPERTY

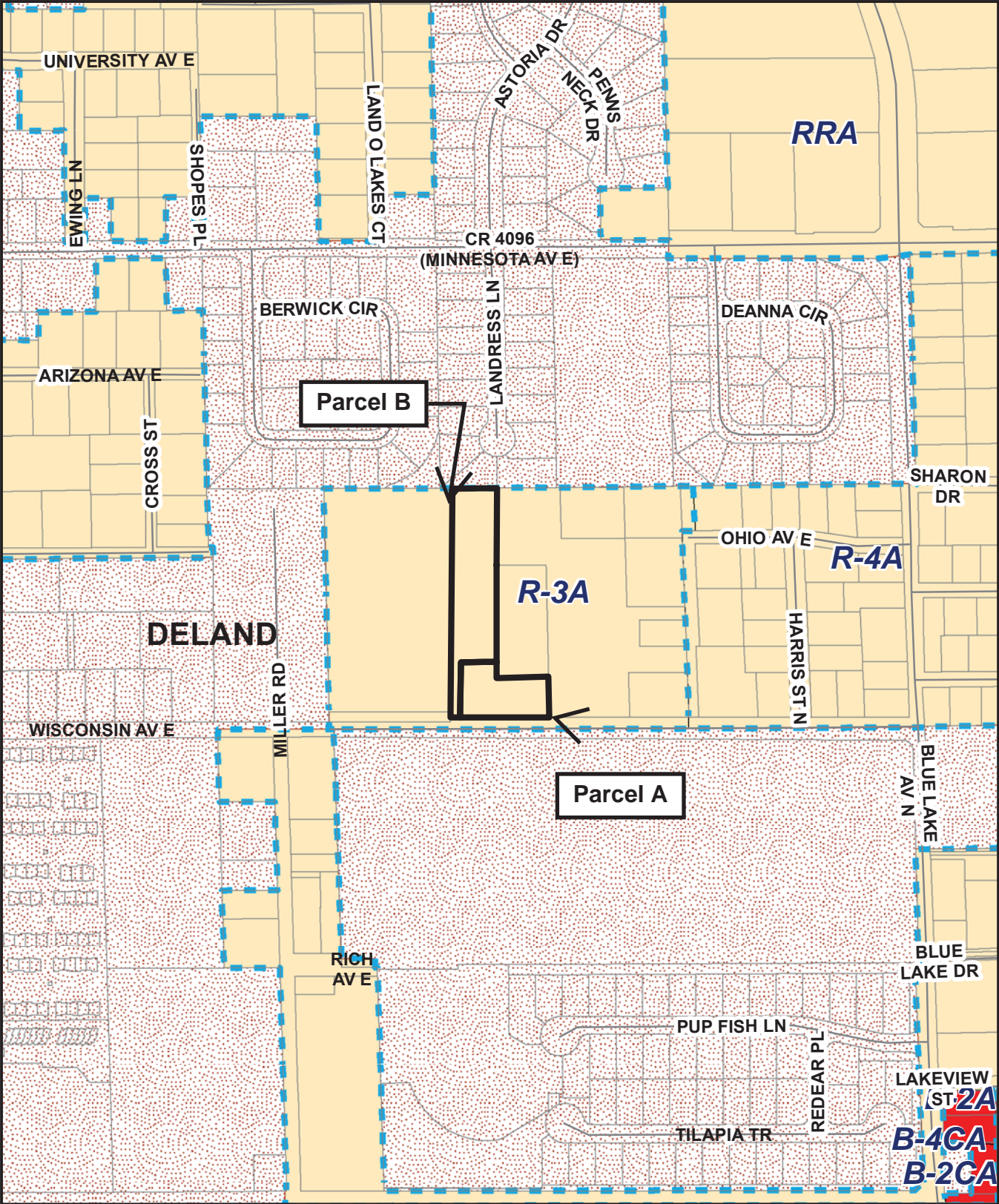
IMAGE DATE 2018



1" = 400'
3/28/2019

ZONING CLASSIFICATION

V-19-045

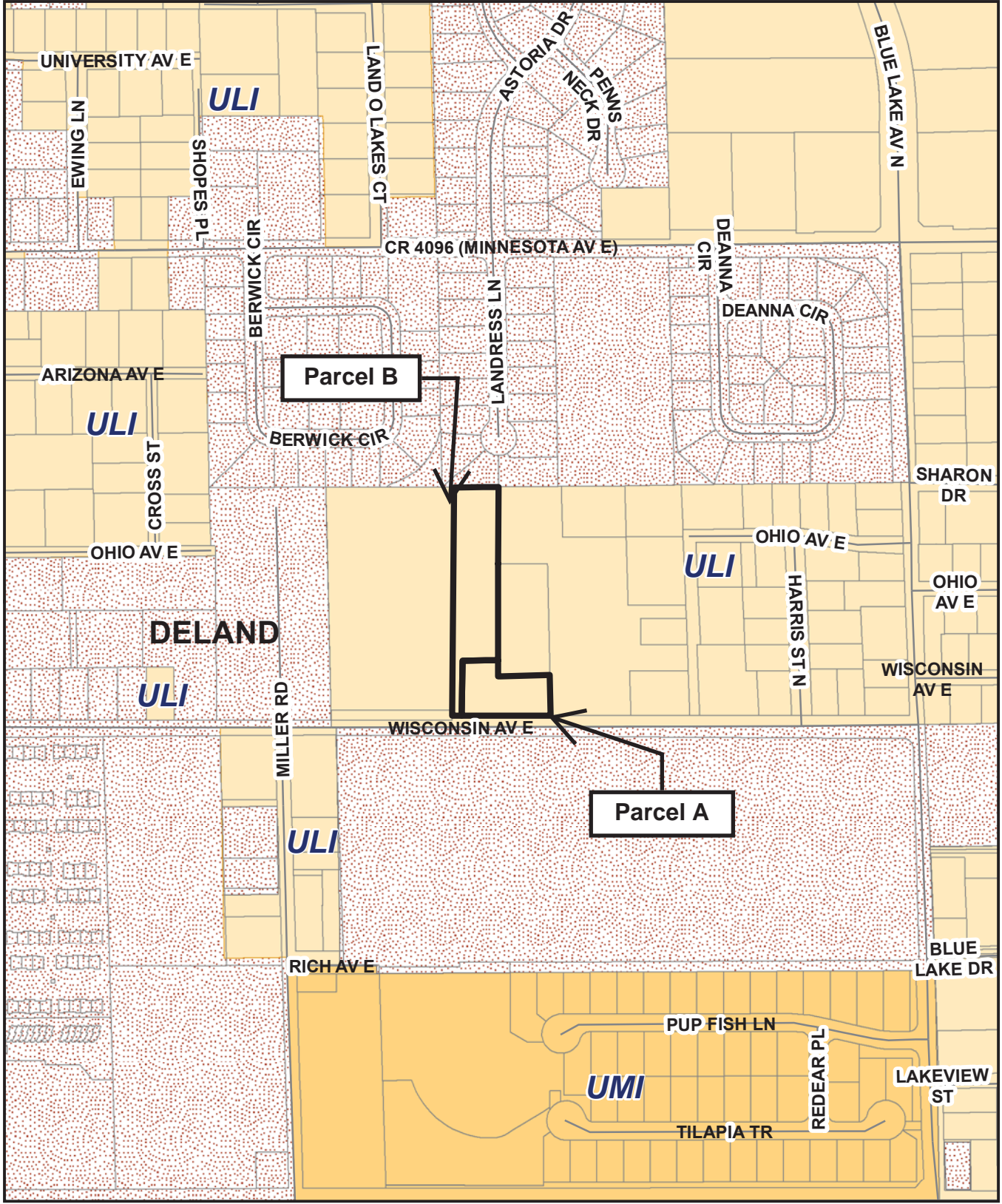





- SUBJECT PROPERTY
- COMMERCIAL
- INCORPORATED
- ZONING BNDY
- RESIDENTIAL




1" = 400'
3/28/2019

FUTURE LAND USE V-19-045

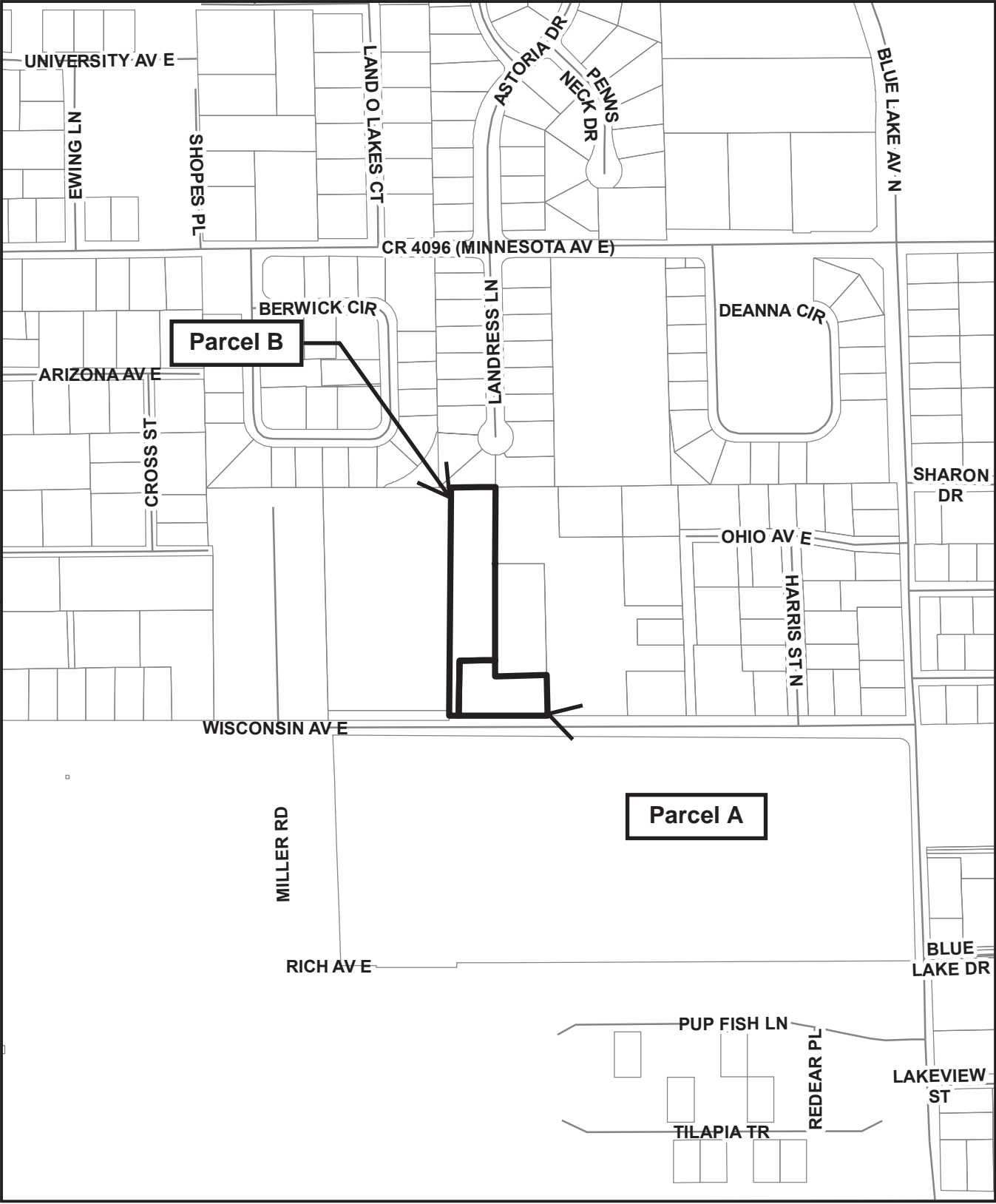





-  SUBJECT PROPERTY
-  INCORPORATED
-  URBAN LOW INTENSITY

 URBAN MEDIUM INTENSITY

 1" = 400'
3/28/2019

ECO/NRMA OVERLAY
V-19-045



-  SUBJECT PROPERTY
-  ECO
-  NRMA



1" = 400'
3/28/2019