TOWN OF EAST TROY

N9330 Stewart School Road • P.O. Box 872 East Troy, Wisconsin 53120 Telephone (262) 642-5386 Fax (262) 642-9701

NOTICE OF JOINT MEETINGS OF THE TOWN BOARD OF THE TOWN OF EAST TROY AND THE TOWN PLANNING COMMISSION

On Wednesday, February 5, 2025, the Town Planning Commission of East Troy will meet at the Town Hall, N9330 Stewart School Road, at 6:30 pm, the following agenda item(s) would be considered:

AGENDA

- Review & Approval of Planning Commission Minutes December 4,2024 and December 18, 2024
- 2. REZONE/CONDITIONAL USE- Sent back to Planning Commission after August 19, 2024.

 John Stoss, applicant, West Rod Cottage Industries LLC, Owner, is requesting a Conditional Use. The applicant's goal is to allow 8 parking stalls for commercial use, allow 8 commercial use mooring spaces along with 2 personal use mooring spaces (total of 10 mooring spaces) under the description of a Marina Conditional Use.

N8828 Stringers Bridge Road

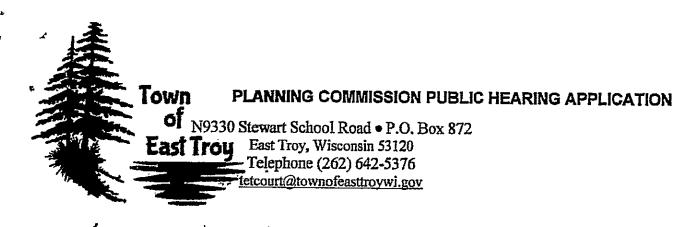
East Troy, WI 53120 Parcel No: P ET 1800006A

West Rod Cottage Industries LLC, Owner / John Stoss, Applicant

- 3. Other Business & Public Comments
- 4. Adjourn

Persons with Disabilities who need accommodations to attend the meeting should contact the Town Clerk at this address as soon as possible: N9330 Stewart School Rd., East Troy WI 53120 or call 262-642-5376.

Posted <u>January 22, 2025</u> Jennifer Olson - Planning Commission Secretary



REZONE: CONDITIONAL USE: OTHER:
OWNER: WEST ROD COTTAGE INDUSTRIES
APPLICANT: JOHN STOSS
PROPERTY ADDRESS: N 8828 STRINGERS BRIDGE RD.
OWNER PHONE NUMB: 4/4-406-9637
APPLICANT PHONE NUMB:
EMAIL: FABLE TICON. NET
PARCEL NUMB: PET 1800006A SECTION: 18
PRESENT ZONING: C-4 REQUESTED ZONING: C-2

To apply for a Planning Commission Request, you will need to submit the following prior to the third Tuesday of the Month:

- 8 copies of your County Zoning Administration Application
- A check for the \$300.00 application fee (payable to The Town of East Troy)
- 8 copies of this Town Application
- 8 copies of the plans/blueprints (one copy scaled to legal size paper or email a PDF please)
- 8 copies of a summary painting the Commissioners a picture of your vision for this land.

 Please, include points of reference below as applicable.

Zoning Checklist

- ➤ Have you reviewed the Walworth County Zoning Application Form?
- ➤ Is the proposed zoning change consistent with the 2050 Land Use Plan?
- > Is the proposed zoning change consistent with surrounding properties?
- > Does the proposed zoning change have any significant impact on public facilities or services? (i.e. highways, streets, water, sewage, drainage, schools, emergency services, etc.).
- ➤ Have you spoken to Chuck Decker, Sanitary District 2, about sewer vs septic for your property? Will he submit a letter?

Conditional Use Checklist

> Have you reviewed the Walworth County Conditional Use Application Form? YES

➤ Would the conditional use impact existing traffic patterns? NO

➤ Will your proposal increase the percentage of impervious surface upon the property in which the conditional use is being proposed? If yes, please quantify the amount of impervious surface to be created and mitigation measures to be implemented to reduce erosion potential to the adjoining property. NO CHANGE IN IMPERVIOUS SURFA

> Will your proposal have any significant impact on public facilities or services? (i.e. highways, streets, water, sewage, drainage, schools, emergency services, etc.).

➤ Will your proposal create harmful or nuisance effects that include noise, dust, smoke, odor, or other factors? NO

Variance Checklist N/A

> Have you reviewed the Walworth County Variance Application Form? YES

> Provide details for the 3-step test N/A

➤ UNIQUE PROPERTY LIMITATIONS. Compliance with the terms of the Code of Ordinances is prevented by unique features of this property N/A

➤ UNNECESSARY HARDSHIP. Unnecessary hardship is present because N/H

- > NO HARM TO PUBLIC INTERESTS. A variance will not be contrary to the public interest N/N
- > Are you requesting any modifications to any setbacks (street, side, rear or shore yard)? NO
- ➤ Will your proposal increase the percentage of impervious surface upon the property in which the conditional use is being proposed? If yes, please quantify the amount of impervious surface to be created and mitigation measures to be implemented to reduce erosion potential to the adjoining property. NO

The Planning Commission Public Hearing is the first Wednesday of the month at 6:30 pm and the Planning Commission Decision-Making meeting is the third Wednesday of the month at 6:30 pm. The Town Board then makes the final decision at the next Regular Town Board meeting (typically scheduled for the second Monday of the month at 6:30 pm). Walworth County Planning & Zoning then hears the request, after they receive the Town's decision.

	PETITION FO	OR AMENDMENT OF THE WALWOR	TH COUNTY KH
Fee _	(see schedule)	CODE OF ORDINANCES (ZONING/SHORELAND ZONING) (Rezone Application)	LURM Staff Initials KH
The following	ng information must l	be submitted before this application will	be processed:
	The signature of the	property owner (see below)	
		e pg. 2 & additional information packet)	0.0.111.
	information packet)	vey or site plan with a legal description (s	ee pg. 2 & additional
		and delineation report & GIS shapefiles of v	wetland boundary
	(email to kminer@co		
	Provide a letter of de	cision from the Township(s) prior to the C2	ZA Hearing
The undersign (Zoning/Shor	ned hereby petitions the Celand Zoning) as follows		
PROPE	RTY OWNER: WE	ST ROD COTTAGE	INDUSTRIES
ADDRE	ss: N883/	STRINGERS BRIDGE	RD
		414-406 9637 EMAIL: F	
APPLIC	ANT (If other than o	wner):	
ADDRE	SS:		
PHONE	NUMBER (Applican	it): 414-406-9637 EMAIL: F	ABLETICONONET
TOWN:	EAST TROY	tax parcel no. PET 180	00006A
		REQUESTED ZONI	
RESIDE	ENTIAL REZONES:	Number of Proposed lots:O _ Hous	ber of Proposed ing Units:O
	ERCIAL & TRIAL REZONES:	Total Proposed Gross Floor Area (All Buildings): NO BUILDINGS	ite Area /2 ACRES
evalu SUFF	ate your request. THE L	nested by the Walworth County Zoning Agency if ACK OF INFORMATION SUBMITTED MAY ENY A PETITION. If you have any questions research 741-4972.	IN ITSELF BE
THE AND REZO	HEARING. FAILURE THE REZONE PETITI	TE APPLICANT OR A REPRESENTATIVE TO APPEAR MAY RESULT IN THE HEARD ON EITHER BEING POSTPONED OR DENINGT REPETITION FOR THE REZONE FOR ARING.	NG BEING POSTPONED IED. IF DENIED, THE
Dated this _	6 TH day of M	AY ,2024.	Refunds only when applicable
PROPERT	Stos Y OWNER'S SIGNA	TURE APPLICANT'S S	BIGNATURE
A ALVIA MANA			
Rezone Applicat	ion		(Revised 6/9/2023)

			KH
Fee _	(see schedule)	CONDITIONAL USE PERMIT APPLICATION FOR WALWORTH COUNTY	LURM Staff Initials KH
The 74-1	following information 85, if applicable):	must be submitted before this application will be proc	essed (Refer to Section
		property owner (see below)	
	Project narrative (see	pg. 2 & additional information packet)	
	A to-scale plat of sur	vey or site plan (see pg. 2 & additional information packet)	
	Site plan showing lo	cation of buildings, roads and other pertinent facilities.	
	lum@co.walworth.v	nd delineation report & GIS shapefiles of wetland boundary	(email to
0	Any necessary additi		
0	Number of employee	s or users to be accommodated (if applicable):	
	Start-up and compl	s or users to be accommodated (if applicable):etions date for installation of all improvements: Start	Completion
repr	PROPERTY OWNER ADDRESS: <u> </u>	oreland Zoning), Walworth County, Wisconsin for a condition of the Second Secon	OUSTRIES
		than owner):	
	ADDRESS:		
1	PHONE NUMBER (A	pplicant):EMAIL:	
7	TOWN: EAST T	ROY TAX PARCEL NO. PET 180000	6A
2	ONING DISTRICT:	C-2 TYPE OF STRUCTURE(S) NOTHING	NEW CURRENTLY/ GAR-
1	PROJECT NARRATI	VE - DESCRIBE PROPOSED USE (ATTACH ADDIT	TIONAL DETAILS): AGE
*			The Property of Contract Contract of Contract Co
		PLEASE SEE,	ATTACHIO

More information may be requested by the Walworth County Zoning Agency if deemed necessary to properly evaluate your request. THE LACK OF INFORMATION SUBMITTED MAY IN ITSELF BE SUFFICIENT CAUSE TO DENY AN APPLICATION. If you have any questions regarding this procedure, please contact the Zoning Office at (262) 741-4972.

IT IS NECESSARY FOR THE APPLICANT OR A REPRESENTATIVE TO BE PRESENT AT THE HEARING. FAILURE TO APPEAR MAY RESULT IN THE HEARING BEING POSTPONED

AND/OR THE CONDITIONAL USE API	PLICATION EITHER BEING POSTPO	NED OR DENIED.
Dated this 6 TH day of MAY	, 20 24.	Refunds only when applicable
John Stoss		when applicable
PROPERTY OWNER'S SIGNATURE	APPLICANT'S SIG	NATURE
Conditional Use Application	1 (Revised 12/14/2022

Revised 12/14/2022



Project Narrative for tax parcel PET 1800006A

message

ohn Stoss <Fab1@ticon.net>
o: John Stoss <fab1@ticon.net>

Wed, May 8, 2024 at 11:43 AM

The purpose of this Rezone and Conditional Use Permit is.

1. Allow 8 parking stalls for commercial use.

2. Allow 8 commercial use mooring spaces along with 2 personal use mooring spaces for a total of 10 mooring spaces.

3. The Conditional Use Permit can be described under the definition of a marina.

4. Marina means the use of a building, structure or place for the rental of watercraft or the rental of mooring space that consists of a pier, pier slips, wharfs, mooring structures, or a combination of the same for securing watercraft.

ALSO PAGE (4)





Project Narrative for tax parcel PET 1800006A

lohn Stoss <Fab1@ticon.net>
o: John Stoss <fab1@ticon.net>

Thu, Oct 17, 2024 at 10:45 AM

The purpose of this Rezone and Conditional Use Permit is.

1. Allow 8 parking stalls for commercial use.

2. Allow 8 commercial use mooring spaces along with 2 personal use mooring spaces for a total of 10 mooring spaces.

3. The Conditional Use Permit can be described under the definition of a marina.

4. Marina means the use of a building, structure or place for the rental of watercraft or the rental of mooring space that consists of a pier, pier slips, wharfs, mooring structures, or a combination of the same for securing watercraft.

5.Year round use, utilizing air boat watercraft. The season will be all year round.





repairs and maintenance only. The limited access easement shall connect to a street or other officially approved way.

Manufactured home means a structure certified and labeled as a manufactured home under 42 US Code sections 5401 to 5406 which, when placed on a site:

- (1) Is set on an enclosed foundation in accordance with section Wis. Stats. § 70.043(1), which meets the standards set forth in subchapters III, IV, and V of NR ch. 21, Wisconsin Administrative Code, or is set on a comparable enclosed foundation system approved by the building inspector. In townships that utilize a building officer, that officer shall require a plan certified by a registered architect, registered professional engineer, or building inspector to be submitted in order to ascertain that a preposed comparable foundation system provides proper support for the structure.
- (2) Is installed in accordance with the manufacturer's instructions.
- (3) Is properly connected to utilities.
- (4) Shall have a minimum width of 22 feet.
- (5) Shall have a core area of living space at least 22 feet by 22 feet in size.

Marina means the use of a building, structure or place for the rental of watercraft or the rental of mooring space that consists of a pier, pier slips, wharfs, mooring structures, or a combination of the same for securing watercraft.

Microbrewery means a brewery with a system size of ten or less barrels of beer producing no more than 2,000 barrels of beer per year.

Mini-warehouse means a structure containing separate, individual, and private storage spaces of varying sizes leased or rented with individual leases for varying periods of time.

Minor home occupation means an occupation for gain or support conducted entirely within the residence by resident occupants only, which is

customarily incidental to the principal use of the premises, and does not exceed 25 percent of the area of any floor.

Minor structures means any small, 100 square feet or less, movable accessory erection or construction, such as birdhouses, pethouses, play equipment, and arbors.

Mitigation means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

Mobile home means a vehicle manufactured or assembled before June 15, 1976, designed to be towed as a single unit or in sections upon a highway by a motor vehicle and equipped and used, or intended to be used, primarily for human habitation, which has an overall length in excess of 45 feet. "Mobile Home" includes the structure, its plumbing, heating, air conditioning and electrical systems, all appliances and all other equipment carrying a manufacturer's warranty. The removal of the wheels, axles, or other components of the running gear and/or the mounting of such a structure or vehicle on a foundation or over a basement shall not be deemed to change its status from that of a mobile home. A structure manufactured after June 15, 1976, which is certified and labeled as a manufactured home under 42 US Code sections 5401 to 5406 but which is not set on an enclosed foundation in the manner described in the definition of manufactured home shall be deemed to be a mobile home under this zoning ordinance.

Mobile home lot means a parcel of land for the placement of a single mobile home and the exclusive use of its occupants.

Mobile home park means a parcel of land which has been developed for the placement of mobile homes and is owned by an individual, a firm, trust, partnership, public or private association, or corporation.

Mobile recreational vehicle means a vehicle which is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled, carried or permanently towable by a licensed, light-duty vehicle, is licensed for highway use if registra-

Supp. No. 82

CD74:208



- e. Powest and game management.
- d Parks and reveation needs, religious, but anical garden;
- (2) Accessory more, Arramony is an extension feel but not must their principal accessory more much a leasure of the feel buildings, such against a second state of the state of the section 14 161s.
 - it Stables.
 - b Residential ...
 - c. Agricultural
 - d. Minor home advances over the court of the
- (3) Conditional user, Osci division 4.1
 - Animal hospitals, dieliers and kennels.
 - b. Lund restoration.
 - e. Colf courses.
 - d. Ski hills.
 - e. Yachting clubs and marinas
 - Hunting and fishing clubs.
 - E Recreation camps.
 - h. Public or private campgrounds.
 - i. Commercial stables.
 - Planned residential developments.
 - k. Sawage dispreal plants.
 - Utilities, provided all principal structures and uses associated with the utility are not less than 50 feet from all district lot lines except business, park and industrial.
 - is. Governmental and cultural use such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds, museums, and parkand-ride facilities.
 - n. Bed and breakfast establishments.
 - Conservation development design (five or more dwelling units).

- commercial arboretum (outside primary environmental corridors).
- Commercial greenhouse foutside primary environmental carridor).
- E. Home recupations
- . Holdy forms.
- 14. Conventional design.

Area, height and yard requirements.

	The same of the same of the Charles		
≨ o*	Ar : Width	Minimum 6 acres	
Enteroling	ALTOTA	Medicana 300 fees	
Franking Visids		Maximum 45 firms	
Dwelling and accessory practures	Hear	Monaga 190 fort	
	Eidr	Minimum 20 free except structures used for the hous- ing of animals must be 100 feet from let lines	
	Subdies- pion rand	Minutes 25 fort	
	Town	Menimum 50 fees	
	Coursey	Minimum 65 feet	
	Federal heghway that tachud- ing ficeways?	Manuel 65 feet	
	Electronic Anticols	Ricimum 70 feet Structures used to house animals meas to located at least 100 feet from all property lines	

- (6) Existing substandard lets. See section 74-221.
- (6) Conservation developments (five or more dwalling units).
 - Maximum density: ene dwelling unit per five acres.
 - Area, height and yard requirements:

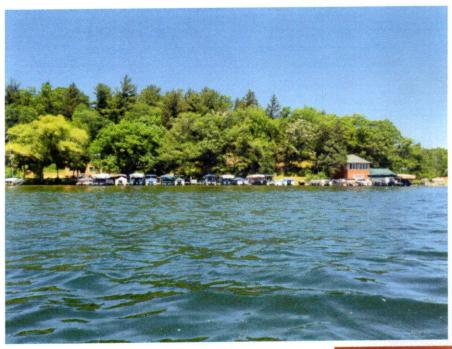
Lot size Area Minimum 49,800 ag. R. Writth Minimum 450 facts

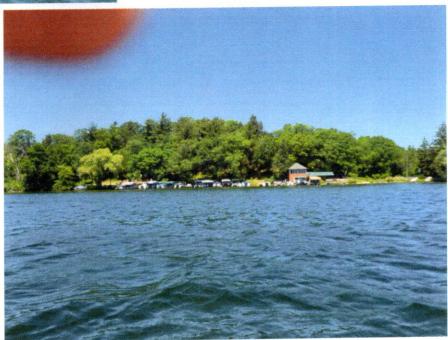
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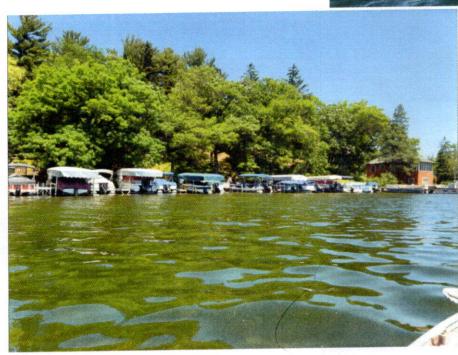
consistent with the prioritized list of resources to conserve and other design consideration of section 11.9A of the County subdivision ordinance. The Zoning Agency may modify the required open space and/or setback requirements of conservation development design on a site specific basis during the conditional use review if the developer can demonstrate that the requirement cannot be met due to unique shape or characteristic of the property. The district open space and/or setback standards for conservation development design may be modified provided that the average intensity and density of land use shall be no greater than that permitted for the district in which it is located. Conservation developments, which are approved with a modification to the open space and/or setback requirements of conservation development design standards, shall not qualify for a density bonus. Modification of the open space and or setback requirements shall be limited to the minimum necessary. Open space shall not be modified greater than 20 percent of the minimum open space percentage requirement of the conservation development design standard. Setbacks shall not be modified below the conventional design standards for the district. Setbacks which are specifically listed as smaller than the conventional design standards by conservation development design standards shall not constitute a modification (i.e. buildings housing animals as specified by conservation development design may be reduced to 25 feet from interior lot lines and not constitute a modification. Setbacks from subdivision roads as listed by conservation design that specified than conventional design shall not constitute a modification).

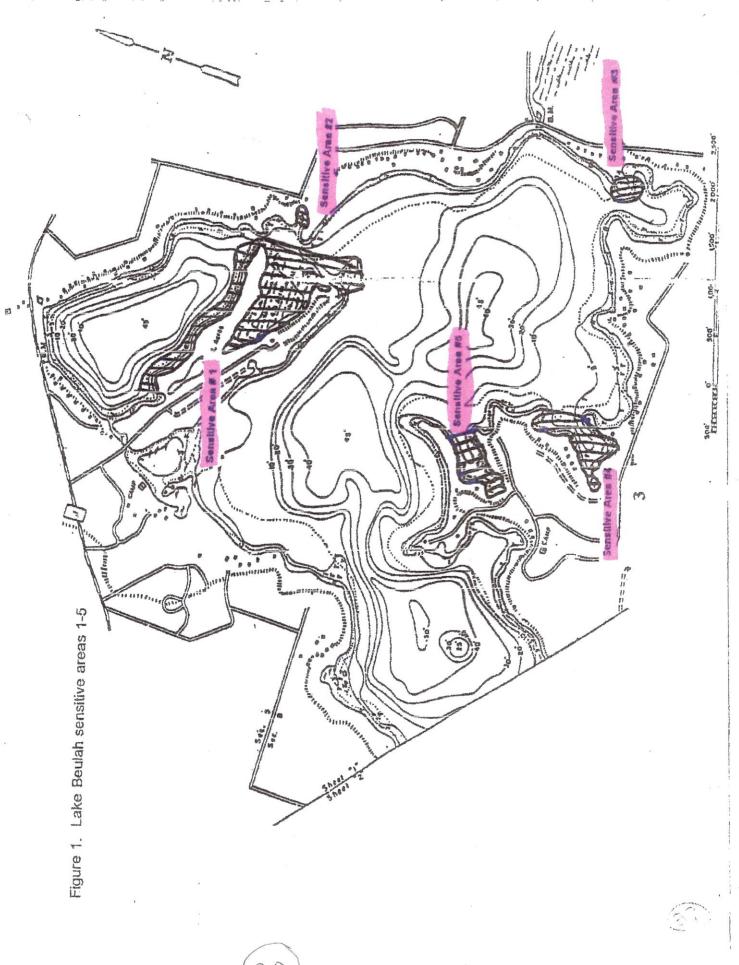
C-4 Shoreland Wetland district. The district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat. The primary purpose of this district is to preserve, protect, and enhance the lakes, streams, and wetland areas in Walworth County in a manner that minimizes adverse impacts upon the wetland. The proper regulation of these areas will serve to maintain and improve water quality, both ground and surface; prevent flood damage; protect wildlife habitat; prohibit the location of structures on soils which are generally not suitable for such use; protect natural watersheds; preserve shore cover; preserve natural beauty; and protect the water based recreational resources of the County.

- (1) Designation. The C-4 district includes shorelands wetlands in the jurisdiction of this ordinance which are designated as wetlands on the current Shoreland Zoning Map-Walworth County, Wisconsin and actual field delineations. The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer (SWDV) is incorporated into this ordinance as a reference in determining the location of wetlands.
- (2) Permitted uses. The following uses are permitted, subject to general shoreland zoning regulations in section 74-173 and 74-174 of this ordinance, the provisions of Wis. Stats. ch. 30 and 31, and the provisions of other State and Federal laws, if applicable:
 - a. Activities and uses which do not require the issuance of a zoning permit, but which must be carried on without any filling, flooding, draining, dredging, ditching, tiling or excavating:
 - 1. Hiking, fishing, trapping, hunting, swimming, and boating;
 - 2. The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits, and tree seeds, in a manner

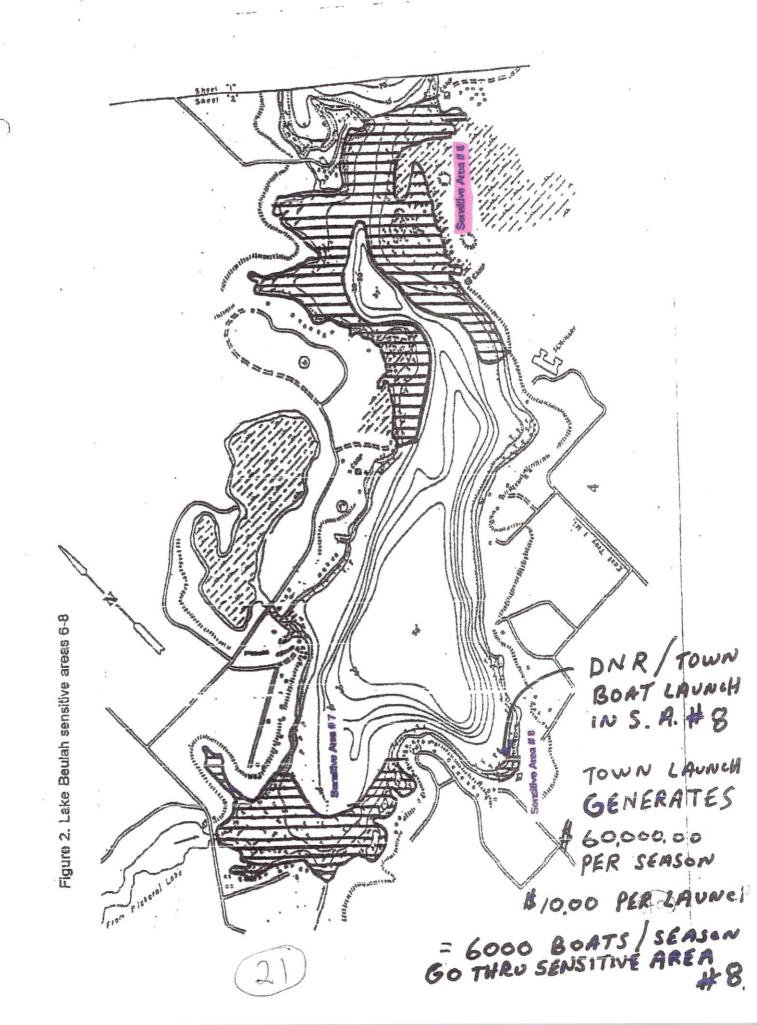








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legal authority to make the decision it did because the decision to not allow the mine was a legislative decision that could only be made by the county board -- the legislative body. The lead opinion in the Supreme Court's decision determined that the ordinance (the standards in the ordinance, etc.) properly authorized the committee's actions so it was not an improper delegation of legislative authority. Since Act 67 is limited to the zoning board, it does raise the argument that if it is the governing body that issues the conditional use permit, the governing body, as a legislative body, has more discretion to act on conditional use permits because they are not bound by the requirements of Act 67.

■Can a local ordinance provide for an appeal of a conditional use permit decision to another local body?

A number of local governments provide for appeal of a plan commission decision on a conditional use permit to the zoning board of appeals or the governing body. It is not clear from the wording of Act 67 if it preempts local ordinances from having an intermediate step of appeal to a zoning board or the governing body before the denied applicant could appeal the decision to circuit court. An ordinance providing for an intermediate appeal in an ordinance should still be acceptable under an argument that if the applicant succeeds in the appeal it saves the time and expense of having to bring a lawsuit in a court of law.

Brian W. Ohm, an attorney, is a professor in the UW-Madison Department of Planning and Landscape Architecture and the state specialist in planning law for UW-Extension.





Local governments can't just say, "We have a standard in or ordinance that a CUP promote public health, safety, and welfare. We think there are traffic impacts so we deny the CUP." Local governments need substantial evidence that there will be traffic impacts. That evidence will provide the basis for more specific conditions imposed by the local government or suggested by the applicant. There are engineering solutions for many impacts so it will be difficult for there to be no condition that could be imposed to meet the ordinance standards. It may be extremely expensive to follow the condition -that might stop the project. Perhaps the hours of operation end up being so limited the applicant drops the project. That may lead the applicant to argue the condition is unreasonable. Resolution of that issue will take further litigation.

Historically, most CUPs are approved. Denials are very limited. Act 67 may make denials harder.

■How closely do conditions imposed by the zoning board need to match the "standards" (requirements and conditions) outlined in the zoning ordinance? In other words, do you need to rely on the ordinance purpose or ordinance standards when crafting conditions?

Yes, Act 67 requires that "any condition imposed must be related to the purpose of the ordinance and be based on substantial evidence." Many ordinances include general statements like protect public health and safety in the purpose statement of the ordinance, as a requirement of the ordinance, or as a standard for granting conditions. Kraemer & Sons Inc. v. Sauk Cnty. Adjust. Bd., 183 Wis. 2d 1, 13, 515 N.W.2d 256 (1994), provides guidance that standards in ordinances can include general standards like the "need to protect public health, safety, and welfare" and more specific standards like "mining operations must not impair water quality." Act 67 does not prohibit the use of general standards so local governments should still include them. They just will need to provide substantial evidence to justify why the condition is necessary to protect public health, safety, and welfare.

■Act 67 requires applicants to demonstrate that all requirements and conditions are, or shall be, satisfied. This seems like it will be problematic. Do you have any tips that a local government can use to avoid situations where the applicant promises to meet the requirements/conditions and then never follows through?

A local government could revoke the permit or take other legal action if the requirements and conditions are not met. The body granting a conditional use permit retains jurisdiction over the permit to insure that the applicant complies with the conditions over the life of the permit and the applicant does what they said they would do. Just like the enforcement of any zoning matter, the zoning administrator will need to monitor the activity to insure compliance. Neighboring property owners also can monitor compliance and can file a complaint with the local government --"The permit allows the mine to operate from 8am to 5pm and they have been working until 7 pm this past week." The local government could revoke the permit for noncompliance. They could also impose a monetary penalty for not being in compliance. They should check the enforcement section of their zoning ordinance to see what it currently provides. Now Act 67 requires that the applicant provide substantial evidence that they will comply. It is not clear that applicants have been held to this standard before. This might prove helpful when dealing with, for example, "bad actors" -- "In the past, you had a CUP for a similar use and you didn't do x, y, and z as you were supposed to do. Provide us with substantial evidence that you will do things differently." It might be difficult for the applicant to do.

■Does Act 67's reference to only the "zoning board" mean that the plan commission and/or governing body cannot grant conditional use permits?

Under prior Wisconsin law, it was interpreted that the authority to grant conditional use permits could rest with either the zoning board of appeals/adjustment, the plan commission, or the governing body.³ It is not clear whether the use of "zoning board" was a drafting error or intentional.

It may lead some people to argue that as a result of Act 67 only the zoning board can grant conditional use permits despite the language elsewhere that conditional use permits can be decided by the zoning board, the plan commission, or the governing body. (When there is a conflict in the statutes, the most recently adopted statute controls.)

The language of Act 67 may lead others to argue that Act 67 only applies to conditional use permits issued by the zoning board. The plaintiffs in *AllEnergy* made the argument that the county committee did not have the

³ See Wis. Stat. §§ 59.694(1), 60.65(3) and 62.23(7)(e)

The new conditional use law applies to applications for conditional use permits filed on and after November 28, 2017.

Local governments should review the requirements of their ordinance to consider adding to or revising the conditions listed in the ordinance to ensure that the local government will be able to review specific development proposals against the purpose of the ordinance and be able to support conditions imposed on a specific application with substantial evidence. Act 67 may prompt some local governments to reconsider what might be listed as a conditional use in certain zoning districts and explore creating new districts or other ways to regulate the use. Local governments might also want to a multistep process that informs applicants of the conditions the zoning board will imposed prior to the board's decision so the applicant can prove that they can comply with the conditions.



Frequently Asked Questions About Act 67²

■Does Act 67 Limit Local Discretion to Deny a Conditional Use Permits?

Act 67 attempts to limit the level of discretion implied in the lead opinion of Wisconsin Supreme Court in the AllEnergy case.

Clearly under Act 67, if an applicant agrees to meet all the requirements of the ordinance and all the conditions imposed, the local government has no discretion to deny the permit.

However, local governments still have discretion in terms of whether or not something is listed as a conditional use in the zoning ordinance. Local governments also have discretion as to whether or not to impose a condition (for example every permit might not need conditions related to hours of operation). Local governments also have the authority to deny a permit if the applicant cannot meet the requirements of the ordinance or the conditions imposed. The fact that Act 67 talks about denial of a permit and the right challenge a denial in court shows the legislature did not take away all authority to deny an application for a conditional use permit.

A local government still has the ability to approve or deny a permit, and to attach conditions. A local government either approves a CUP because it complies with the requirements of the ordinance and the conditions imposed or they deny it because it does not meet the requirements of the ordinance and the conditions imposed.

Local governments have more discretion when rezoning a property. Act 67 may prompt some local governments to limit what is a conditional use and require a rezoning to a different district for certain uses.

■Is a local government obligated to craft conditions that will help the applicant meet the ordinance requirements?

No, but the local government needs to articulate why the proposed use does not meet the ordinance requirements and allow the applicant to suggest conditions that address the deficiencies.

For example, say an ordinance has general standards for CUPS like "protect public health, safety, and welfare." The zoning board uses that standard to say "we should not allow this project because it will lead to traffic congestion leading to unsafe traffic conditions." Under Act 67, the local government can't deny it unless they back it up with substantial evidence. The local government decides to conduct a traffic study. The traffic study concludes that if truck traffic to the site is limited to certain hours, there will be no congestion. The applicant proposes a condition to limit truck traffic based on the findings of the study.

There needs to be an opportunity for some back and forth between the applicant and the local government --- for example, the local government says we're concerned about water quality. They will need to provide specific facts about the water quality impacts. They may use that information to impose a specific condition that will address the water quality issue or it might be that the local government identifies the threat posed by the conditional use and the applicant responds by saying "I've hired a hydrologist, here is their report about the water quality impacts. The hydrologist recommends we do x, y, and z to address those impact. We propose doing that". The applicant develops the alleviating conditions.

What Act 67 changes is that in the past a group of citizens who are opposed to a project would say "deny the CUP because it will have traffic impact" and the local government would deny the CUP. Act 67 changes that.

² Thanks to Becky Roberts with the Center for Land Use Education at UW-Stevens Point for compiling these questions.

Perspectives on Planning

January 2018



Department of Planning & Landscape Architecture University of Wisconsin-Madison/Extension 925 Bascom Mall Madison, Wisconsin 53706-1317

https://dpla.wisc.edu

Conditional Use Permits After 2017 Wisconsin Act 67

By Brian W. Ohm

2017 Wisconsin Act 67 adds new sections to the Wisconsin Statutes governing the issuance of conditional use permits to the general zoning enabling laws for cities, villages, towns, and counties. Until the addition of these sections, the general zoning enabling statutes did not include the term "conditional use permit" nor provide any guidance for the issuance of conditional use permits. Rather, the law governing conditional use permits was based on court decisions.

Act 67 Responds to the Wisconsin Supreme Court Decision in AllEnergy Corp. v. Trempealeau County

The Wisconsin Supreme Court's May 2017 decision in AllEnergy Corp. v. Trempealeau County, 2017 WI 52, provides important context for understanding the conditional use requirements inserted in Act 67.

The AllEnergy case involved the denial of a conditional use permit for a proposed frac sand mind in Trempealeau County. The County voted to adopt 37 conditions for the mine, which AllEnergy agreed to meet, but then the County voted to deny the conditional use permit in part relying on public testimony in opposition to the mine. A divided Wisconsin Supreme Court upheld the County's denial of the conditional use permit acknowledging the

discretionary authority of local governments in reviewing proposed conditional uses.

Act 67 in part reflects the sentiment articulated by the dissent in the *AllEnergy* decision According to the Dissent in *AllEnergy*: "When the Trempealeau County Board writes its zoning code, or considers amendments, . . . is the stage at which the County has the greatest discretion in determining what may, and may not, be allowed on various tracts of property." "Upon adding a conditional use to a zoning district, the municipality rejects, by that very act, the argument that the listed use is incompatible with the district." "An application for a conditional use permit is not an invitation to re-open that debate. A permit application is, instead, an opportunity to determine whether the specific instantiation of the conditional use can be accomplished within the standards identified by the zoning ordinance."

While local governments did not need to change their ordinances in response to the *AllEnergy* decision, Act 67 should prompt local governments to review their zoning ordinances, practices, and procedures to ensure they meet the new statutory requirements.

The New Statutory Requirements

Act 67 Act 67 limits local government discretion related to the issuance of conditional use permits.

¹Act 67 creates section 62.23 (7) (de) for cities, villages, and towns exercising zoning under village powers, section 60.61 (4e) for towns exercising zoning without village powers, and section 59.69 (5e) for counties.

The new law adds the following definition of "conditional use" to the Statutes: "'Conditional use' means a use allowed under a conditional use permit, special exception, or other zoning permission issued by a [city, village, town, county] but does not include a variance."

Act 67 also includes the following definition of "substantial evidence," a term used in several places in the Act: "'Substantial evidence' means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that reasonable persons would accept in support of a conclusion." This language softens the language of earlier versions of the bill that stated substantial evidence did not include "public comment that is based solely on personal opinion, uncorroborated hearsay, or speculation." Public comment that provides reasonable facts and information related to the conditions of the permit is accepted under Act 67 as evidence.

Act 67 then provides that "if an applicant for a conditional use permit meets or agrees to meet all of the requirements and conditions specified in the [city, village, town, county] ordinance or imposed by the [city, village, town, county] zoning board, the [city, village, town, county] shall grant the conditional use permit." This new language follows the argument made by the plaintiffs and the dissenting opinion in the AllEnergy case. The use of the term "zoning board," however, is at odds with current Wisconsin law that allows the governing body, the plan commission, or the zoning board of adjustment/appeals to grant conditional uses. This "zoning board" terminology may lead to some confusion.

Act 67 also provides that the conditions imposed "must be related to the purpose of the ordinance and be based on substantial evidence" and "must be reasonable and to the extent practicable, measurable" This new statutory language emphasizes the importance of having clear purpose statements in the zoning ordinance. In addition, since local comprehensive plans can help articulate the purpose of ordinances that implement the plan, local governments should consider including a requirement that the proposed conditional use furthers and does not conflict with the local comprehensive plan.

Act 67 states that permits "may include conditions such as the permit's duration, transfer, or renewal." In the past, sometimes there was confusion about whether local governments had the authority to place a time limit on

the duration of a conditional use permit. This new statutory language clarifies that local governments have that authority.

Next, Act 67 provides that the applicant must present substantial evidence "that the application and all requirements and conditions established by the [city, village, town, county] relating to the conditional use are or shall be satisfied." The city, village, town or county's "decision to approve or deny the permit must be supported by substantial evidence."

Under the new law, a local government must hold a public hearing on a conditional use permit application, following publication of a class 2 notice. If a local government denies an application for a conditional use, the applicant may appeal the decision to circuit court. The conditional use permit can be revoked if the applicant does not follow the conditions imposed in the permit.

The New Requirements In A Nutshell:

- ◆The requirements and conditions specified in the ordinance or imposed by the zoning board must be reasonable, and to the extent practicable, measurable.
- Any condition imposed must relate to the purpose of the ordinance and be based on substantial evidence.
- ◆Substantial evidence means facts and information, other than merely personal preferences or speculation, directly pertaining to the requirements and conditions an applicant must meet to obtain a conditional use permit and that a reasonable person would accept in support of a conclusion.
- If an applicant meets, or agrees to meet, all of the requirements and conditions specified in the ordinance or imposed by the zoning board, the local government must grant the CUP.
- ◆The applicant must provide substantial evidence that the application and all requirements and conditions are, or shall be, satisfied.
- ◆If an applicant does not meet one or more of the requirements (for example the application is incomplete) or conditions specified in the ordinance or imposed by the zoning board, the local government can deny the CUP.
- A local government's decision to approve or deny a conditional use permit must be supported by substantial evidence.







New Pier Grandfathering Legislation Signed Into Law

Tom Larson | O May 02, 2012



On April 2, 2012, Governor Walker signed into law 2011 Wisconsin Act 167, legislation that grandfathers almost all existing piers. In addition, the new law eliminates the pier registration requirement and creates new standards for piers placed on or after April 17, 2012. Finally, the new law guarantees that waterfront property owners have a right to place a pier, even if the property is located in areas that the Wisconsin Department of Natural Resources (DNR) considers to be environmentally significant.

In 2007, Wisconsin lawmakers enacted a law that attempted to grandfather 99 percent of the existing piers from DNR permitting requirements. (2007 Wisconsin Act 204.) To be eligible for grandfathering, a pier was required to meet the following standards:

- The pier must have been originally placed prior to February 6, 2004.
- The width of the pier could be no wider than eight feet.
- A loading platform or deck was allowed as long as it is located at the lakeward end of the pier and the platform had a surface area no greater than either (a) 200 square feet, which may be any width, or (b) 300 square feet, if the deck/platform is no wider than 10 feet.

In addition, the pier must have been registered with the DNR by April 1, 2011. The registration deadline was later changed to April 1, 2012.

However, both the DNR and lawmakers discovered that many more piers than originally anticipated would not qualify for grandfathering. In addition, very few piers that did qualify for grandfathering were registered with the DNR. Accordingly, lawmakers decided that it would be best to resolve the pier grandfathering issue once and for all by grandfathering all existing piers.

Grandfathering of Existing Piers

Under the new law, all existing piers placed before April 17, 2012 are grandfathered unless:

- a. The DNR notified the riparian owner before April 17, 2012 that the pier is "detrimental to the public interest."
- . b. Or if the pier "interferes with the riparian rights of other riparian owners." A pier that extends into a neighbor's riparian zone, which is the water in front of the neighbor's property, is an example of a pier that would interfere with the neighbor's riparian rights.

Also, if the pier is grandfathered, the riparian owner may relocate or reconfigure the pier as long as the pier is not enlarged.

In addition, the riparian owner does not need to register the pier with the DNR in order to grandfather the pier. All existing piers are automatically grandfathered unless the pier meets at least one of the two exceptions previously listed.

Note: REALTORS® should ask waterfront property owners if (a) they have received notice from the DNR that their pier is "detrimental to the public interest," and (b) their pler interferes with the rights of other riparian owners.



How many boat slips can I have?

For new piers,* the number of boat slips, berths, mooring spaces, etc. allowed on your property is determined by the amount of shoreline owned. The law states that for non-commercial properties or properties with less than three dwelling units, up to two boat slips are allowed for the first 50 feet of shoreline owned and one for each additional full 50 feet of shoreline owned. For non-commercial properties you can also place two personal watercraft for each additional 50 feet of shoreline owned and one personal watercraft for each additional 50 feet of shoreline owned. You can place this number without a permit.

*Existing piers placed before April 17, 2012 are able to keep existing boat slip usage.

with three or more dwelling units, up to four boat slips are allowed for the first 50 feet of shoreline owned and two for each





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Туре

Date

08/01/2011 2:53

Album Download

Size





18828 Stringers Bridge Rd , pier permit, and grandfathered piers and boat slips.

sage

ohn Stoss <Fab | @ticon.net>

o: Jim Mills < Jim@millsboehm.com>, John Stoss < fab1@ticon.net>

Thu, Aug 22, 2024 at 10:33 AM

Hi Attorney Mills

Thanks for taking an hour yesterday August 21st, 2024 to discuss your letter regarding my piers dated February 28, 2012 confirming the grandfathering of my "piers wharfs and watercraft", and that you told me yesterday the Town now can't locate my 2008 pier permit, however since your 2012 letter says you used it to determine my shoreline it may still be found somewhere otherwise we can conclude it existed back in 2012 as indicated.

Please see the screen shot off the DNR website indicating that my watercraft are grandfathered along with my piers and wharfs.

Please advise if you have any disagreement with this brief summary of our discussion. Sincerely"

John Stoss

August 22nd, 2024

Screenshot_20240821_155354_Samsung_Internet.jpg 607 KB

B-3 Waterfront business district. The B-3 district is intended to generally provide for orderly and appropriate regulations to insure the compatibility of the diverse uses of retail and customer service establishments typically found on waterfront property.

(1) Principal uses.

- a. Bakery.
- Boat rental and boat access (ten or less boats).
- c. Boat liveries (ten or less boats).
- d. Clothing and apparel store.
- e. Clothing repair shop.
- f. Confectioneries retail sales.
- g. Delicatessen.
- h. Fish market.
- i. Florist.
- j. Fruit store.
- k. Fur apparel, retail sales.
- I. Furniture upholstery shop.
- m. Furniture store.
- n. Gift store.
- o. Grocery store.
- p. Hardware store.
- q. Library.
- r. Meat market (retail sales no



DIVISION 13. - DEFINITIONS | C...

https://library.municode.com/wi/walwor



Code of Ordinances





wharts, mooring structures, or a combination of the same for securing watercraft. mooring space that consists of a pier, pier slips, place for the rental of watercraft or the rental of Marina means the use of a building, structure or JOHN COPY GIVEN TO TOWN BOARD ON 8-19-24

Attorneys James R. Mills Gabrielle Boehm

MILLS & BOEHM, LLP

123 Wolf Run, Suite 1 P.O. Box 717 Mukwonago, Wisconsin 53149

Telephone (262) 363-7311 Facsimile (262) 363-5485

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Attorney/Client privileged communication. Do not copy or distribute without approval.

Place in a separate file. This is not a public record.

June 5, 2012

FACTS + FINDINGS LETTER "K"+"L".

Plan Commission Members TOWN OF EAST TROY N9330 Stewart School Road P.O. Box 872 East Troy, WI 53120

RE:

Stoss Rezone

Dear Members:

I just spoke with Pam Schense from the DNR who was present last Thursday when SEWRPC and the Army Corp of Engineers was on the Stoss property for the purpose of wetland delineation. Ms. Schense reports that John Stoss was also present and had his surveyor ready to survey the property. Once Mr. Stoss submits his survey to SEWRPC, it will complete it's survey.

Ms. Schense reported that almost everything beyond the shed, and the shed itself is on the upland portion of the property. She reported that if Mr. Stoss simply wants to rezone the property to rebuild the shed to make it into a storage unit, no wetlands would be affected. She did state that the number of piers, and watercraft that John had at the property has been grandfathered due to new legislation that went into effect on April 17th. However, any additional changes to the number of piers or watercraft would require a DNR permit. Mr. Stoss reportedly told Ms. Schense that he has no intention of increasing the number of piers or watercraft at that site.

On August 1st, additional rules come into play. What Ms. Schense thought was interesting was that the new legislation requires a DNR permit for every new pier after that date on "designated waters" or "areas of special resource interest". Since Lake Beulah is included within both of those definitions, every new pier on Lake Beulah after August 1st will require a DNR permit.

Most of the provisions of the new legislation can be found on a link to the new Chapter 30 on the DNR's website. I have not yet looked at the site myself, but Ms. Schense reported that all piers of any width that are 200 square feet or less are now exempt (unless it is a new pier in designated waters or in an area of special resource interest), and that riparian owners can now have three (3) jet ski's in addition to three (3) other watercraft.



It appears as though the Town Board will have to revisit it's Pier Ordinance again. We should probably wait until after the August 1st regulations are effective before attempting to review and update the ordinance.

Very truly yours,

JAMES R. MILLS (State Bar No. 1024429)

JRM:sec

cc: Town of East Troy Board Members

MILLS & BOEHM, LLP

Attorneys James R. Mills Gabrielle Boehm 123 Wolf Run, Suite 1 P.O. Box 717 Mukwonago, Wisconsin 53149

Telephone (262) 363-7311 Facsimile (262) 363-5485

February 28, 2012

Mr. Darrin Schwanke Walworth County Land Use and Resource Mgmt. Dept. 100 West Walworth Street P.O. Box 1001; Rm 222 Elkhorn, WI 53121 FACTS + FINDINGS LETTER "K"+"L"

RE:

West Rod Cottage Industries

Tax Parcel #: P ET1800006A/N8828 Stringers Bridge Rd

Dear Mr. Schwanke:

As you know, I represent the Town of East Troy. The Town Board of the Town of East Troy has advised me that Walworth County would like an interpretation of the Town Ordinance with respect to what is an allowable use/number of moorings on the above referenced property.

I have reviewed the Town's pier ordinance. That ordinance defines a mooring as including a pier. Based upon a calculation of 249 feet of frontage, as drawn on the pier application submitted by Mr. John Stoss for this property, he would be allowed to have five (5) moorings or piers. The Town Code allows for 2 moorings for the first 50 feet of a riparian owner's shoreline and an additional mooring for each additional 50 feet of shoreline. The Town Code would allow up to 10 boats per parcel (subject to frontage restrictions), if the parcels were not in the same owner's name, prior to requiring a marina permit. Based upon Mr. Stoss's reported use last year, he had less than 10 boats at this property and would therefore not be required to obtain a marina permit from the Town of East Troy.

I was not able to find any statutory or administrative code regulations regarding how to measure lakeshore frontage. When I contacted the DNR, I was told that it was appropriate to count every foot regardless of the irregularities of the shoreline. A discrepancy exists between the Town ordinance definition of a mooring and the number of boat slips allowed by the DNR. The Town's definition of mooring is broader than the definition of mooring found in the state statute as it includes piers in the definition. The DNR does not regulate moorings or piers, it is concerned with the number of boat slips and would limit the number of boats on 249 feet of frontage to five (5). I believe that the Town ordinance could reasonably be read to allow 5 moorings (in the form of a pier) and the number of boats thereon would not matter until or unless you have 10 or more boats, which would require a marina permit application.

February 28, 2012 Page 2

There is legislation pending that would grandfather everything in the waters (including the number of boats) as of the date of passage. As such, I do not believe that the DNR is likely to take any enforcement action(s) at this property. In fact, once the pending legislation passes, I believe any DNR enforcement will be rendered virtually impossible. I will likely advise the Town Board to hold off on clearing up any perceived discrepancies in the Town's pier ordinance until such time as the pending legislation is acted upon.

Very truly yours,

JAMES R. MILLS (State Bar No. 1024429)

JRM:sec

cc: Town of East Troy Board Members

Mr. John Stoss

- f. Bed and breakfast establishments.
- g. Planned residential developments.
- h. Hobby farms.
- Animal hospitals, shelters and kennels.
- (4) Area, height and yard requirements.

lot:	Area:	Minimum 40,000 square -
With a m	Width	Minimum 160 foot
Building	k Lodging.	Maximum 45 feet
Yards:	Rear	Minimum 25 feet
	Side Street	Ministers 15 feet
	Subdivision read	Minimum 25 for
	Town road	Minimum 80 20 3
	County road	Minimum 67 has
	State and Federal highways that including	
	treewnys)	Ministrano 85 Person
	Shore	Minimum 76 Sec.
	Animais	Structures a self for the housing of animals anist he located at least 190 feet from side and year lo lines

(5) Existing substandard lots. See section 74-221.

(Ord. of 6-11-02; Amd. of 1-14-03; Amd. of 7-13-04; Amd. of 5-10-05; Amd. of 8-9-05; Ord. No. 315-09/05, pt. V, 9-8-05; Ord. No. 331-01/06, pt. III, 1-10-06; Ord. No. 353-04/06, pt. VII, 4-29-06; Ord. No. 462-10/07, pt. III, 10-9-07; Ord. No. 591-12/09, pt. XXXIX, 12-15-09; Ord. No. 673-03/11, pt. IV, 3-8-11; Ord. No. 740-09/12, pt. XXIV, 9-6-12; Ord. No. 879-09/14, pt. XVIII, 9-4-14; Ord. No. 938-07/15, pt. XI, 7-14-15; Ord. No. 940-07/15, pt. V, 7-20-15; Ord. No. 996-07/16, pt. IV, 7-28-16; Ord. No. 1049-06/17, pt. XXXII, 6-13-17; Ord. No. 1074-11/17, pt. IV, 11-6-17; Ord. No. 1171-06/19, pt. XXIII, 6-11-19; Ord. No. 1194-11/19, pt. VIII, 11-12-19; Ord. No. 1273-05/22, pt. XII, 5-10-22)

Sec. 74-179. Conservation districts.

C-2 Upland resource conservation district. The primary purpose of this district is to preserve, protect, enhance, and restore all significant woodlands, related scenic areas, submarginal farm lands, other farmland as allowed by the

comprehensive land use plan and abandoned mineral extraction lands within the County. Regulation of these areas will serve to control crosion and sedimentation and will promote and maintain the natural beauty of the County, while seeking to assure the preservation and protection of areas of significant topography, natural watersheds, ground and surface water, potential recreation sites, wildlife habitat, and other natural resource characteristics that contribute to the environmental quality of the County yet permit larger residential lots in these environmentally sensitive areas.

(1) Principal uses.

- Single-family detached dwellings.
- Forest preservation.

- e. Forest and game management,
- Parks and recreation areas, aristreta, botanical gardens.
- (2) Accessory uses. Acrossory uses are permitted but not until their principal structure is present or under construction for accessory uses involving structures or buildings, such structures or haddings, shall be subject to the common at sof section 74-166.
 - a. Stables.
 - b. Residential accessed a cloud mass.
 - c. Agricultural structures
 - d. Minor home occupation/professional home office.
- (3) Conditional usen, (See division 4.)
 - Animal hospitals, shelters and kennels.
 - b. Land restoration.
 - c. Golf courses.
 - d. Ski hills.
 - e. Yachting clubs and marinas.
 - f. Hunting and fishing clubs.
 - g. Recreation camps.
 - h. Public or private campgrounds.
 - Commercial stables.
 - Planned residential developments.
 - Sewage disposal plants.
 - Utilities, provided all principal structures and uses associated with the utility are not less than 50 feet from all district lot lines except business, park and industrial.
 - is. Governmental and cultural use such as fire and police stations, community centers, libraries, public emergency shelters, parks, playgrounds, museums, and parkand-ride facilities.
 - n. Bed and breakfast establishments.
 - e. Conservation development design (five or more dwelling units).

- Commercial arboretum (outside primary environmental corridors).
- Commercial greenhouse (outside primary environmental corridor).
- r. Home occupations
- 8. Hobby farms.
- (4) Conventional design.

Area, height and yard requirements

and yard requirements.		
Let Building	Area Width	Minimum 5 acres Minimum 300 feet
Pwelling Yards	Height	Maximum 45 feet
liwelling and acces- tory structures	Rear	Minimum 100 feet
	Side	Minimum 20 feet except structures used for the hous- ing of animals must be 100 feet from lot lines
	Street. Subdivi- sion road	
	Town read	Minimum 60 feet
	County	Minimum 65 feet
	State and Federal bighway (not includ- ing feceways)	Minimum 85 feet
	Shore Animets	Minimum 76 feet Structures used to house unimals must be located at least 100 feet from all property lines

- (5) Existing substandard lets. See section 74-221.
- (6) Conservation developments (five or more dwelling units).
 - Maximum density: one dwelling unit per five acres.
 - Area, height and yard requirements:

Lot size Area Minimum 49,690 sq. R. Width Minimum 159 feet



To: WCZA

Re: Town East Troy Rezone decision support

Walworth County I and Use and Resource Managament Nov 12, 2024

I am a Town of East Troy riparian property owner of over 20 years on Lake Beulah (Lk B) and for most of that 20 years I've come to know the applicant John Stoss (JS) aka West Rod Industries, as he has been a long time active member of the local community. I have reviewed all of the several Plan Commission and Town Board meetings on this Rezone matter and I'm in support of the Town Board decision to approve this rezoning of the upland portion from C4 to C2 for the following reasons:

First, I would never support anything that would harm Lk B, and I don't believe anyone would, including the applicant who has resided near Lk B for over 40 years. I also believe the Public has the right to access this beautiful resource, and JS has proven to me over many years to be a responsible business owner providing that unique boat rental access to the general Public, including those who may not be able to afford a personal water craft. His Public boat rental service is also hindered by limited Public parking and a low bridge that limits pontoon boat passage.

I've heard several "expert" witness opinions expressed that the marina operation will cause intentional, irreversible harm to LK B...but since his boat rental operation has been ongoing for over 20 years in this shoreline location, I did not see or hear any hard evidence of this harm, only speculation, and in my 20+ years I fail to see or understand just where all the suspected damage has been done?

I also did not hear these same witnesses mention anything regarding potential harmful effects from the other 50+ private boats moored on the West side of the bridge that regularly traverse this same channel, or the dozens of private boats moored within the other 7 Sensitive zones on Lk B, and so I question the selective outrage.

During the many meetings, I heard several times allegations that this rezoning request was for the "entire property" and would set a very dangerous precedent that could harm every lake in Wisconsin... in reality it was stated by JS many times that only the "upland portion" of the property is in question whereas the current C4 wetland would remain intact, undisturbed.

It is my understanding that the 2012 WDNR shoreline ruling granted grandfathering of existing piers, not just moorings as some concluded. It is also my understanding is the applicant has made every effort to work with the Plan Commission and County officials on this matter.

For these reasons I support the Town Board decision as fair and reasonable.

John Finney

N9299 East Shore Rd

East Troy WI 53120



Walworth County Land Use and Resource Management

Oldenburg, Sheril

From:

Schwanke, Darrin

Sent:

Thursday, November 14, 2024 11:07 AM

To: Cc:

Hastings, Katelyn

C. . .

Oldenburg, Sheril

Subject:

Fw: Support letter to WCZA

Attachments:

Stoss WCZA11-24.docx

fyi



Darrin Schwanke

Code Enforcement Officer Land Use & Resource Management Dept. Phone: (262) 741-7905

100 W Walworth St., PO Box 1001 Elkhorn, WI 53121 dschwank@co.walworth.wi.us

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From: John Finney < johncfinney@gmail.com> Sent: Thursday, November 14, 2024 10:54 AM

To: Schwanke, Darrin <dschwank@co.walworth.wi.us>

Cc: fab1@TICON.net <fab1@ticon.net>
Subject: Support letter to WCZA

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Darrin,

John Stoss said you'd be the best person to distribute my letter of support for his upcoming Rezone hearing next Thurs 21st.
Thank you for doing that for me.

Best Regards,

John Finney johncfinney@gmail.com 847-284-9535



July 9, 2024



Walworth County Land Use and Resource Management

To: Town of East Troy Planning Commission Board

Cc: Jen Olson, Clerk

Subject: West Rod Cottage Industries, LLC Rezone & Conditional Use Amendment Application

I attended the first Planning Commission meeting on 6/5/2024 when Mr. Stoss, the owner of Cottage Industries, first submitted his application for a Rezone and Conditional Use Amendment for his existing properties. There were two other applicants who preceded John and the tone of the meeting was very positive, cooperative and supportive while these applicants presented their case.

Almost immediately I noticed a dismissive and negative change in the tone of the meeting when Mr. Stoss was setting up to give his presentation, which I thought was extremely thorough, very informative and attempted to anticipate many, many questions. Mr. Stoss appeared very cooperative and was very willing to provide an updated delineation drawing and a courtesy copy of an environmental study upon request by the board. Mr. Stoss provided email exchanges with Walworth County and the DNR which seemed to be in support of his relatively innocuous requests.

My understanding of his requests amount to a reclassification of current zoning and conditional use permits of his existing properties. There doesn't seem to be any physical alterations to either the lots or mooring spaces, so this is mainly a paperwork activity from my view point. It appears to me his requests are focused on making it easier for his patrons to conduct business with his Beulah Bait & Boat LLC business which he legally operates today.

I spoke in favor of the Double D's Container Bar proposal at the General Town Board Meeting last year after I noticed the clear negative "pile-on" by the public which took place at the Planning Commission meeting, even though the Planning Commission ultimately approved his application and sent it to the Town Board for their approval. However, the Town Board pushed it back to the Planning Commission based upon a sketchy argument that the Planning Commission did not allow for sufficient public comment. It seemed to me the applicant lost interest and pulled his application after two months of back and forth. I don't live on Lake Beulah, so my only interest is to promote good community oriented business in the Town of East Troy.

I have a personal engagement which just came up that will keep me from attending the 7/10/2024 Planning Commission meeting. Since I wasn't able to offer comments for the

Container Bar request, I do not want to make the same mistake again. Therefore, I am writing to the Planning Commission in support of Mr. Stoss's requests.

I have grown to know John after seeing him at every Town Board meeting over the past two years and he has presented himself as a reasonable, well prepared individual. I'm not sure what has transpired in the past which may have caused an adversarial opinion of John, but I haven't seen any justification for it since 2022 when I started attending meetings. I would like the board to give him the same fair, impartial consideration that all other applicants receive.

My investigation of Beulah Bait & Boat LLC reveals that customers are very satisfied with their experience and comment specifically about how accommodating John is with his customers. His business is good PR for the Lake, promotes a good image for the Town of East Troy, already legally exists and I see no reason why he shouldn't be granted these paperwork requests.

Thank you for the work you do for the town and for your consideration of my request.

Joe Jones, Town resident N9033 E Miramar Drive



Oldenburg, Sheril

From:

Schwanke, Darrin

Sent:

Monday, November 18, 2024 9:38 AM

To:

Hastings, Katelyn; Oldenburg, Sheril

Subject:

Fw: Planning Commission Letters for 07.10.24 Meeting

Attachments:

Planning Commission Letter 07.09.2024 MJ.pdf; Planning Commission Letter 07.09.2024

Joe Jones.pdf

FYI



Darrin Schwanke

Code Enforcement Officer
Land Use & Resource Management Dept.

Phone: (262) 741-7905

100 W Walworth St., PO Box 1001

Elkhorn, WI 53121

dschwank@co.walworth.wi.us

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From: Joe Jones <joejones343@gmail.com> Sent: Friday, November 15, 2024 8:07 PM

To: Schwanke, Darrin <dschwank@co.walworth.wi.us>

Cc: Stacey, Rick <rstacey@co.walworth.wi.us>; MaryJo Jones <maryjo.jones366@gmail.com>; John Stoss

<fab1@ticon.net>

Subject: Fwd: Planning Commission Letters for 07.10.24 Meeting

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

RE: STOSS REZONE & CONDITIONAL USE APPLICATION

Darrin, MaryJo and I were not sure whether the original letters of support we submitted were being forwarded to the county on this request, so we are forwarding them to you with this email. This fairly straight forward rezone and conditional use request was first reviewed by the Planning Commission on 6/5/2024 and it has gone through at least four Planning Commission Meetings and two regular town board meetings. At each of these meetings the same opposition group of people stood up during public comments and recited the same environmental generalizations, but nothing I could determine that was specific to this property.

This property has existed in its current physical state for the better part of 20 years and I do not see how there will be any adverse environmental impact for the next 20 years considering the applicant is not physically altering the property from its current physical state. In fact, my feeling is that there will be less

impact to sensitive area #7 if boats are allowed to access the large body of water from this newly rezoned property. It is perplexing how many meetings it took to come to this approval conclusion.

As we have both stated in our attached letters, Beulah Bait and Boat, LLC Pontoon and Fishing Boat Rental business is a well respected and highly thought of business in the community. His patrons give him high marks in every regard, especially in caring for the lake and bending over backwards to make their experience memorable. Beulah Bait and Boat provides the means for public access to the lake and holds each one of his customers accountable to high environmental standards in protecting the lake. This rezone and conditional use provides the owner with expanded opportunities across his multiple businesses.

We will be unable to attend the county meeting to express our support in person, so we wanted to get these letters off to the county board well in advance of the upcoming meeting. Thank you for your consideration of our input and we look forward to hearing the results of your meeting.

Best Regards,

Joe Jones

Cell: (815) 315-3930 joejones343@gmail.com

----- Forwarded message -----

From: Joe Jones < joejones 343@gmail.com >

Date: Tue, Jul 9, 2024 at 10:22 AM

Subject: Planning Commission Letters for 07.10.24 Meeting

To: Jennifer Olson < tetcourt@townofeasttroywi.gov >

Cc: MaryJo Jones <maryjo.jones366@gmail.com>, John Stoss <Fab1@ticon.net>

Jen, MaryJo and I are unable to attend tomorrow's Planning Commission Meeting, so we decided to provide our input by email letter which is attached. We pulled John's email address off of the application in the packet and copied him since we are submitting these the day before the meeting.

Please forward the attached letters to the seven board members so they have it well before the meeting tomorrow night. We request someone read them during public comments so it becomes part of the video record.

Thank you for your assistance in this matter and feel free to reach out if you have any questions.

Best Regards,

Joe Jones

joejones343@gmail.com

-----Sent From iPad-

July 9, 2024

NOV 1 8 2024

and Resource Management

To: Town of East Troy Planning Commission Board

Cc: Jen Olson, Clerk

Commissioners,

I support local businesses! From my perspective, Mr. Stoss, owner, is simply requesting a lot rezone for commercial parking and a conditional use amendment for commercial mooring spaces to improve his boat rental business and to better accommodate his customers.

His business has a 4.9 out of 5 Google rating. Here are a few Google review comments;

- John is Amazing! He accommodated our request to rent the boat on short notice, provided boat rules to the boys & educated me on operating mechanics. He provided a map of the lake for best fishing areas, sandbars, and danger zones.
- Outstanding day of fishing on Lake Beulah thanks to John. He was patient, kind, helpful and knowledgeable.
- This was my first time boating on Lake Beulah. I rented a pontoon for a full day. The staff
 was friendly, the pontoon was great and Lake Beulah turned out to be the perfect place
 to spend a day.

I'm asking the Planning Commission to please consider cooperation and support to this local business owner who grew up in the Town, presents our beautiful Lake Beulah and provides a great boat rental service with his abundant knowledge of the lake and area.

Thank you for your consideration,

MaryJo Jones, Town resident N9033 E Miramar Drive

Google Link:

https://www.google.com/search?q=beulah+bait+and+boat&rlz=1C1EJFA enUS731US828&oq=&gs lcrp =EgZjaHJvbWUqCQgCEEUYOxjCAzIJCAAQRRg7GMIDMgkIARBFGDsYwgMvCQgCEEUYOxjCAzIJCAMQRRg7GMIDMgkIBBBFGDsYwgMvCQgFEEUYOxjCAzIJCAYQRRg7GMIDMgkIBxBFGDsYwgPSAQkvNDI1ajBqMTWoAgiwAgE&sourceid=chrome&ie=UTF-8#Ird=0x8805956fce9502d7:0x984a715a8d74559,1,,,;

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Beulah Bait & Boat LLC Pontoon & Fishing Boat Rental

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Walworth County Land Use and Resource Management





November 21, 2024

County Zoning Agency County Board Room 114 Walworth County Government Center 100 West Walworth Street Elkhorn, WI 53121



Walworth County Land Use and Resource Management

Subject: P ET 1800006A Rezone & Conditional Use

Dear County Zoning Board:

I know the county planning commission will be taking up the Rezone application for Parcel PE T 1800006A on Thursday, November 21, 2024. I will be unable to attend but feel it important to provide a written summary of my reasons for voting yes to this rezone request.

In my opinion, the chairman and town attorney could have been much clearer in defining what they were looking for from us to support a yes vote on this rezone request during the October 14, 2024 Regular Town Board meeting. It seems curious to me that only the three less senior board supervisors were confused, clearly expressing their puzzlement with non-verbal gestures as Barb Church read through her 20-minute written summary supporting her no vote. It's unfortunate we don't have more effective and helpful mentoring taking place in our town.

Given this clear confusion, I wanted to make sure my verbal words from the September 9. 2024 Regular Town Board meeting and my concluding thoughts are put down on paper for the record in support of my yes vote. I believe this written summary should satisfy the evidence and discussion that attorney Mills requested from all of us.

Please accept the following evidence I noted from each of the planning commission meetings and other information provided during the planning commission meetings as follows:

6/5/2024 Planning Commission Minutes

- John Stoss, applicant, West Rod Cottage Industries LLC, Owner, is requesting a Rezone to take a substandard lot (approximately 0.42 acres per GIS of which there is precedent) and make it a C-2 Upland Resource Conservation District which the applicant states in his opinion is consistent with neighboring properties.
- The applicant's goal is to allow 8 parking stalls for commercial use, allow 8 commercial use
 mooring spaces along with 2 personal use mooring spaces (totaling I0 mooring spaces) under
 the description of a Marina Conditional Use.
- Stoss cited that there are several other properties that are C-2 and less than five acres. Stoss
 also addressed what he felt were environmental concerns that may come up. He presented 4
 locations (Lindey's, Dockside, Yacht Club and former DD's) that he listed the distance of all of
 their parking stalls to the high-water mark which were all much closer than on this parcel today,
 140 feet from the lake.
- Stoss also provided some explanation about the 8 sensitive areas on the lake as designated by the DNR. He explained that his existing two piers and 10 boats in sensitive area #7 are far

- less than the number of piers, moorings and boat traffic within the other seven sensitive areas on the lake.
- Stoss referenced an ecological study dated August 30, 2013 which was performed by Applied Ecological Services, Inc., report dated August 30, 2013. In that study Applied Ecological Services, Inc. concluded that Mr. Stoss was impacting 2/3 of 1% of sensitive area #7 with his livery operation.
- Stoss has owned the property for 21 years and has had two delineation maps done on this parcel with no noted changes. Allison Masek from the DNR provided an email dated April 23, 2024. The letter states and I quote, "The parcel does not have any mapped WWI wetland except for what is along the shore so I would be comfortable calling the property upland as mapped in the 2012 delineation. With the mapped wetland near the shore, if there are any future projects in that area, a new delineation might be needed but for the purpose of zoning the entire parcel I think the previous delineation is fine."

7/10/2024 Planning Commission Minutes

 Stoss cited the "Water Trust Doctrine" stating that no one owns the lake and that its use should be open to the public. Stoss stated that he has a history of boat rentals and that throughout all of the years and thousands of patrons that have rented boats from him, there have been no citations issued to those patrons by TETPD or the DNR, largely because Stoss educates his patrons before sending them off.

7/17/2024 Planning Commission Minutes

Stoss provided a copy of an email to each of the commissioners, from Alison Masek (WI DNR)
Cc: Darrin Schwanke and Katelyn Hastings at Walworth County Zoning. This email dated July
3, 2024 states and I quote: "Hi John, Thanks for the follow up call on this email. To clarify, a
new wetland delineation would be needed if there was going to be any soil disturbing activities
near the shore."

9/4/2024 Planning Commission Minutes

- Pictures of several docked boats and livery operations dated August 1, 2011, submitted by Stoss, to validate 2012 grandfathering of his two piers and 10 moorings.
- Letter from Mills & Boehm, LLP, dated June 5, 2012, submitted by Stoss, to further validate 2012 grandfathering of his two piers and 10 moorings. Per the letter, Ms. Schense, DNR, stated "that the number of piers, and watercraft that John had at the property has been grandfathered due to new legislation that went into effect on April 17th."

Public Comments For and Against

There were numerous people and groups who spoke on behalf of the request and against. The majority in support of the request focused on a desire to support the applicant's business on the lake while the majority against the request concentrated their comments on environmental concerns.

Environmental Considerations

To address the environmental concerns directly, the applicant had an Ecological Study performed by Applied Ecological Services, Inc. 17921 Smith Road, PO Box 256, Brodhead, Wisconsin 53520-256 and provided a report dated August 30, 2013, to address environmental concerns. The reason for the study was to conduct an ecological assessment of the property and provide an ecological opinion on the potential impact to Lake Beulah and surrounding wetlands based on the proposed use of ten boat slips and the continued use of two existing permanent piers on the property. In that ecological study

NOV 18 2024

"Portions of the Stoss parcel (i.e., about 250 feet of shoreline; 6.25% of the Sensitive Area's shoreline) are in what has been described as the location of sensitive area 7. The total area of Mr. Stoss's location for ten boat slips and two piers in Sensitive area 7 is about 85' x 45' (3,825 sq. ft.) or 0.064% (About 2/3 of 1%) of Sensitive area 7."

The study compared the 1994 WDNR report which first designated the 8 sensitive areas by Dionne and Helsel with then current conditions in 2013. The following findings were reported:

Highlights of Parking Area Study:

- "No sedimentation or erosion was observed from off the hill or from off the gravel pull off
 area into the mowed lawn area to the south. The gravel pull-off area's bank is stabilized to the
 north and east by large boulders placed at the toe of the small hill on the Stoss property."
- "No sedimentation or gravel was observed to be reaching any areas of the wetland edge or the Lake."
- "Continued use of this area as a parking lot including minor improvements that may be
 necessary for enhancing the parking will not likely impact Beulah Lake water quality or
 adversely impact wetlands on the Stoss property or on other parts of the Lake."

Highlights of Wetlands and Water Study:

- "The wetland fringe on the Stoss property as delineated by SEWRPC (2012) has not been impacted by access onto the piers or boats."
- "Docking boats in this area has not previously resulted in reduced quality of wetland vegetation that would be anticipated if the boating related activities were detrimental to the wetland vegetation."
- "A conversion to non-native species would be one of the expected outcomes in the shoreline areas if the boating activity was detrimental to the wetland vegetation. This was not observed."
- "The water clarity in and around the piers and proposed 10 boat slips (in the small bay area) was similar to what was observed in the adjacent open actively managed navigation channel."
- "Vegetative cover in the small bay area of the existing two piers and area proposed for 10 boat slips will not impact Lake Beulah and appears to be a similar level of vegetation cover as other pier and/or boat docking areas already in other sensitive areas of Beulah Lake."

To further address the environmental concerns that were raised primarily by Lake Beulah Management District (LBMD), this property (Parcel PE T 1800006A) has existed in its current physical condition for the past 20+ years under the same owner, Stoss. The parcel has had an existing gravel parking area big enough to fit eight cars per the county, along with two piers and ten boat slips that existed well before the April 17, 2012, State Legislature grandfather clause. The applicant has repeatedly stated that he is not physically disturbing the land or the shoreline beyond what has existed for those past 20+ years nor does he have intentions or plans for future projects. The applicant also stated that the rezone was based exclusively on the submitted delineation map, re-validated by the surveyor on June 17, 2024. If legitimate environmental concerns do exist for this property and sensitive area 7, as commented by Lake Beulah Management District (LBMD), they, along with their experts would have been taking steps long before this rezone/conditional use request to identify, quantify and measure any impact.

In addition, the DNR has provided correspondence of support for this rezone and the County Zoning Office has stated the upland portion of this parcel is mis-zoned. It is felt that leaving the property in the

NOV 18 2024

current physical condition does not diminish any environmental benefit this property provides for Lake Beulah.

In fact, by rezoning and allowing a conditional use marina on this parcel, the traffic through the channel in sensitive area #7 would be reduced as the applicant already operates a livery operation from his B-1 parcel, directly on the west side of channel. If rezoned, the livery operation could then take place from this parcel which is directly on Lake Beulah on the east side of the channel, avoiding the passage through the channel and unnecessary disturbance to sensitive area 7.

Thank you for your consideration of my evidence, findings, and conclusions in support of my decision to vote yes for this rezone. I am a strong proponent of personal property rights, and I believe this is a classic case requiring all of us as public officials to allow this applicant the ability to make this property functional, especially considering there really is no discernable negative environmental or community impact.

Sincerely,

Joe Jahner

Town of East Troy Supervisor & Town Planning Commission Representative



Attorneys James R. Mills Gabrielle Boehm

MILLS & BOEHM, LLP

123 Wolf Run, Suite 1 P.O. Box 717 Mukwonago, Wisconsin 53149

Telephone (262) 363-7311 Facsimile (262) 363-5485

PERSONAL & CONFIDENTIAL

Attorney/Client privileged communication. Do not copy or distribute without approval.

Place in a separate file. This is not a public record.

June 5, 2012

FACTS + FINDINGS LETTER "K"+"L".

Plan Commission Members TOWN OF EAST TROY N9330 Stewart School Road P.O. Box 872 East Troy, WI 53120

RE:

Stoss Rezone

Dear Members:

I just spoke with Pam Schense from the DNR who was present last Thursday when SEWRPC and the Army Corp of Engineers was on the Stoss property for the purpose of wetland delineation. Ms. Schense reports that John Stoss was also present and had his surveyor ready to survey the property. Once Mr. Stoss submits his survey to SEWRPC, it will complete it's survey.

Ms. Schense reported that almost everything beyond the shed, and the shed itself is on the upland portion of the property. She reported that if Mr. Stoss simply wants to rezone the property to rebuild the shed to make it into a storage unit, no wetlands would be affected. She did state that the number of piers, and watercraft that John had at the property has been grandfathered due to new legislation that went into effect on April 17th. However, any additional changes to the number of piers or watercraft would require a DNR permit. Mr. Stoss reportedly told Ms. Schense that he has no intention of increasing the number of piers or watercraft at that site.

On August 1st, additional rules **come** into play. What Ms. Schense thought was interesting was that the new legislation requires a **DNR** permit for every new pier after that date on "designated waters" or "areas of special resource interest". Since Lake Beulah is included within both of those definitions, every new pier on Lake Beulah after August 1st will require a DNR permit.

Most of the provisions of the new legislation can be found on a link to the new Chapter 30 on the DNR's website. I have not yet looked at the site myself, but Ms. Schense reported that all piers of any width that are 200 square feet or less are now exempt (unless it is a new pier in designated waters or in an area of special resource interest), and that riparian owners can now have three (3) jet ski's in addition to three (3) other watercraft.

29

June 5, 2012 Page 2

It appears as though the Town Board will have to revisit it's Pier Ordinance again. We should probably wait until after the August 1st regulations are effective before attempting to review and update the ordinance.

Very truly yours,

JAMES R. MILLS (State Bar No. 1024429)

JRM:sec

cc: Town of East Troy Board Members

MILLS & BOEHM, LLP

Attorneys
James R. Mills
Gabrielle Boehm

123 Wolf Run, Suite 1 P.O. Box 717 Mukwonago, Wisconsin 53149

Telephone (262) 363-7311 Facsimile (262) 363-5485

February 28, 2012

FACTS + FINDINGS

Igmt. Dept. | 6TTER "K"+")"

Mr. Darrin Schwanke Walworth County Land Use and Resource Mgmt. Dept. 100 West Walworth Street P.O. Box 1001; Rm 222

Elkhorn, WI 53121

RE:

West Rod Cottage Industries

Tax Parcel #: P ET1800006A/N8828 Stringers Bridge Rd

Dear Mr. Schwanke:

As you know, I represent the Town of East Troy. The Town Board of the Town of East Troy has advised me that Walworth County would like an interpretation of the Town Ordinance with respect to what is an allowable use/number of moorings on the above referenced property.

I have reviewed the Town's pier ordinance. That ordinance defines a mooring as including a pier. Based upon a calculation of 249 feet of frontage, as drawn on the pier application submitted by Mr. John Stoss for this property, he would be allowed to have five (5) moorings or piers. The Town Code allows for 2 moorings for the first 50 feet of a riparian owner's shoreline and an additional mooring for each additional 50 feet of shoreline. The Town Code would allow up to 10 boats per parcel (subject to frontage restrictions), if the parcels were not in the same owner's name, prior to requiring a marina permit. Based upon Mr. Stoss's reported use last year, he had less than 10 boats at this property and would therefore not be required to obtain a marina permit from the Town of East Troy.

I was not able to find any statutory or administrative code regulations regarding how to measure lakeshore frontage. When I contacted the DNR, I was told that it was appropriate to count every foot regardless of the irregularities of the shoreline. A discrepancy exists between the Town ordinance definition of a mooring and the number of boat slips allowed by the DNR. The Town's definition of mooring is broader than the definition of mooring found in the state statute as it includes piers in the definition. The DNR does not regulate moorings or piers, it is concerned with the number of boat slips and would limit the number of boats on 249 feet of frontage to five (5). I believe that the Town ordinance could reasonably be read to allow 5 moorings (in the form of a pier) and the number of boats thereon would not matter until or unless you have 10 or more boats, which would require a marina permit application.



February 28, 2012 Page 2

There is legislation pending that would grandfather everything in the waters (including the number of boats) as of the date of passage. As such, I do not believe that the DNR is likely to take any enforcement action(s) at this property. In fact, once the pending legislation passes, I believe any DNR enforcement will be rendered virtually impossible. I will likely advise the Town Board to hold off on clearing up any perceived discrepancies in the Town's pier ordinance until such time as the pending legislation is acted upon.

Very truly yours,

JAMES R. MILLS (State Bar No. 1024429)

JRM:sec

cc: Town of East Troy Board Members

Mr. John Stoss



828 Stringers Bridge Rd , pier permit, and grandfathered piers and boat slips.

n Stoss <Fab1@ticon.net>

Jim Mills <Jim@millsboehm.com>, John Stoss <fab1@ticon.net>

Thu, Aug 22, 2024 at 10:33 AM

Hi Attorney Mills

nanks for taking an hour yesterday August 21st, 2024 to discuss your letter regarding my piers dated February 28, 2012 confirming e grandfathering of my "piers wharfs and watercraft", and that you told me yesterday the Town now can't locate my 2008 pier permit, wever since your 2012 letter says you used it to determine my shoreline it may still be found somewhere otherwise we can conclude existed back in 2012 as indicated.

ease see the screen shot off the DNR website indicating that my watercraft are grandfathered along with my piers and wharfs.

ease advise if you have any disagreement with this brief summary of our discussion. neerely"

ohn Stoss

ıgust 22nd, 2024

Screenshot_20240821_155354_Samsung_Internet.jpg 607 KB





Applied Ecological Services, Inc.

17921 Smith Road, PO Box 256 • Brodhead, WI 53520-256 608-897-8641 • info@appliedeco.com • www.appliedeco.com Specialists in Environmental Research, Planning, Construction and Management

August 30, 2013

John Stoss Fred's Tap N8831 Stringers Bridge Rd. East Troy, WI 53120

Re: Lake Beulah Wetland and Boat Piers and Slips Assessment (AES# 13-0853)

1 7, 1

Dear John,

On August 13, 2013 I visited your property located in Section 18 of T04N, R18E in, Walworth County Wisconsin. The purpose of my visit was to conduct an ecological assessment of the property and provide an ecological opinion on the potential impacts to Lake Beulah and surrounding wetlands based on the proposed use of 10 boat slips and the continued use of two existing permanent piers (i.e. docks) on the property.

1.0 Back Ground Information

A wetland delineation by Southeast Wisconsin Regional Planning Commission (SEWRPC), WDNR and USACE staff in May 2012 (SEWRPC No. CA507-64) found the majority of the Stoss property to consist of uplands with wetlands located adjacent to the open water/shoreline of Lake Beulah. The approximate 0.05 acre (2,120 square foot) wetland is part of the Lake Beulah floodplain-wetland complex and consists of open water, shallow marsh and a small mowed wetland area.

A report issued in 1994 by the WDNR listed the area of the Stoss property as being in what the WDNR designated as Sensitive area 7 of the Lake (Dionne and Helsel, 1994). A total of eight Sensitive areas were described and mapped by the WDNR in the Dionne and Helsel report. A sensitive area is described below and taken from the 1994 Lake Beulah report (Dionne & Helsel 1994).

".. areas of aquatic vegetation identified by the department (WDNR) as offering critical or unique fish and wildlife habitat, including seasonal or life stage requirements, or offering water quality or erosion control benefits to the body of water." (NR 107, 1989)

These might include:

- 1) Diverse stands of high quality native aquatic plants which help provide a buffer against invasion of Eurasian water milfoil, a very aggressive non native aquatic plant which is increasingly becoming a nuisance in Wisconsin's lakes (note: Two non-native aquatics were listed in the wetland delineation report in 2012 that were not listed in Dionne and Helsel 1994; Potamogeton crispus and Myriophyllum spicatum).
- 2) Area of vegetation which trap sediments and nutrients flowing into the lake thereby improving water clarity and reducing available nutrients for undesirable plant growth.
- 3) Areas of vegetation which offer spawning, nesting or feeding habitat for fish and wildlife.
- 4) Area of vegetation whose species composition or hydrology make it an ecologically unique community.



Sensitive Area 7 is described as being "located in the bay near the inlet from Pickerel Lake in the southwestern part of the Lake" (Dionne and Helsel 1994). Sensitive area 7 contains approximately 4,000 feet of shoreline and extends across the bay approximately 1,500 feet into the Lake (which represents six million square feet of lake surface). The maximum depth in Sensitive area 7 is 7 feet. Portions of the Stoss parcel (i.e. about 250 feet of shoreline; 6.25% of the Sensitive area's shoreline) are located in what has been described as the location of sensitive area 7. The total area of Mr. Stoss's proposed location for 10 boat slips and two piers in Sensitive area 7 is about 85 feet by 45 feet (3,825 square feet) or 0.064% (about 2/3 of 1%) of Sensitive area 7.

In 1994, Sensitive area #7 had a diverse assemblage of native aquatic plants, both submergent and emergent with no Eurasian water milfoil (Dionne and Helsel 1994). Dionne and Helsel further stated that a variety of emergent and submerged aquatic plants provide spawning, feeding and nursery habitat for a variety of fishes. In addition Sensitive area #7 provides a variety of habitats for waterfowl species. The plant community was also described as trapping sediments and nutrients coming in from Pickerel Lake and the plant protects the shoreline from erosion and stabilizes the bottom sediments. These functions benefitted the entire lake by reducing available nutrients to nuisance aquatic species and improved the Lake's water quality. In 1994, the WDNR recommended the following for Sensitive area 7:

Aquatic plant control: the WDNR stated that chemical control of aquatic plants would not be permitted as chemical control would have a detrimental effect on the diversity in Sensitive area #7. The WDNR did recommend mechanical cutting be used for navigational channels only and either hand pulling or manual raking as the preferred methods for control of aquatic plants in swimming and boating areas.

2.0 AES Site Visit Existing Conditions and Assessment

The Stoss property on the east side of Stringers Bridge Road consists of a gravel pad in the north corner, a mowed lawn area down to the Lake with a small wetland fringe area (some of which is mowed as part of the lawn area) and a small hill covered with mostly non-native woody shrubs and other vegetation. One structure, a storage building was observed on the lawn portion of the property.

2.1 Gravel Pull-off Parking area on east side of Stringers Bridge Road

The northern portion of the Stoss property assessed during this site visit contains an existing gravel pull-off area that patrons have been using for additional parking for the Tavern at N8831 Stringers Bridge Road. The gravel pull-off area's bank is stabilized to the north and east by large boulders placed at the toe of the small hill on the Stoss property. No sedimentation or erosion was observed from off the hill or from off the gravel pull off area into the mowed lawn area to the south. No discernible impacts to the wetlands or Lake Boulah were detected during the site visit or would be expected from continued use of this existing pull-off area which is approximately 140 feet from the Lake. No sedimentation or gravel was observed to be reaching any areas of the wetland edge or the Lake. Continued use of this area as a parking lot including minor improvements that may be necessary for enhancing the parking will not likely impact Beulah Lake water quality or adversely impact wetlands on the Stoss property or on other parts of the Lake.

2.2 Wetlands and Water

The wetland fringe on the Stoss property as delineated by SEWRPC (2012) has not been impacted by access on to the piers or boats. Wetland vegetation consisted in most areas of a narrow vegetation band of moderate to higher quality vegetation along the shoreline (several feet wide). These included rice cut grass (*Leersia oryzoides*), marsh milkweed (*Asclepias incarnata*), dark green

(24)

bulrush (Scirpus atrovirens), Bidens (Bidens sp.), water horehound (Lycopus americanus) sedges (Carex spp.), wild Iris (Iris virginica) and arrowhead (Sagittaria latifolia). Docking boats in this area has not previously resulted in reduced quality of wetland vegetation that would be anticipated if the boating related activities were detrimental to the wetland vegetation. A conversion to non-native species such as reed canary grass purple loosestrife and giant reed grass would be one of the expected outcomes in the shoreline areas if the hoating activity was detrimental to the wetland vegetation. This was not observed. The wetland fringe will continue to function as a small buffer to the Lake.

The water clarity in and around the piers and proposed 10 boat slips was similar to what was observed in the adjacent open actively managed navigation channel. Lake bed conditions consisted of what looked like to be silty sandy soils approximately 48 inches in depth with scattered water lilies in the small bay area on the Stoss property where boats are proposed to be slipped. There appeared to be more vegetative cover in the small bay as compared to the actively managed (mechanical cutting) in the navigation channel located 20 feet from the longest pier on the Stoss property. Maintenance of a similar level of vegetative cover that is currently existing in the area of the existing two piers and area proposed for 10 boat slips will not impact Lake Beulah and appears to be a similar level of vegetation cover as other pier and/or boat docking areas already in other sensitive areas of Beulah Lake.

2.3 Boating and Swimming Compatibility with Sensitive Areas

Both boating and swimming related activities, based on WDNR recommendations can be compatible in sensitive areas. For instance, the WDNR in Dionne and Helsel (1994) recommended mechanical cutting as a aquatic plant control for navigational channels and either hand pulling or manual raking as the preferred methods for control of aquatic plants in swimming and boating areas in sensitive areas on Lake Beulah. In some instances the WDNR would even permit chemical controls in sensitive areas if they contained the non-native Eurasian milfoil. These management activities would reduce and maintain lowered aquatic plant vegetation cover in areas where boats dock and navigate and where people swim and based on the WDNR recommendations above would not significantly adversely affect the sensitive areas ecological value. This is supported by current use of mechanical vegetation cutting within sensitive areas of the Lake.

A brief review of pier and boat locations in the eight sensitive areas of Lake Beulah suggests that there is lake wide human-use compatibility with the sensitive areas. The eight hundred acre + Beulah Lake with its' eight Sensitive areas have substantial boating related use activities. Navigation channels are actively managed, a public boat launch, a private boat launch and some 150+ piers and boats are in, or actively pass through, the eight Sensitive areas of the Lake.

On the Stoss property, two existing piers are proposed to remain on east side of Stringers Bridge Road in the 85 foot by 45 foot area. The two existing piers are 20 feet long by 22 inch wide (37 square feet) and 48 feet long by 24 inch wide (96 square feet) and extend to a water depth of about three feet. These will remain as permanent piers. The effects to Lake Beulah by the piers, such as shading the surface water which can reduce some aquatic vegetation species cover directly beneath the pier, has been the condition for years and is not affecting lake water quality or fish use. Removal of aquatic vegetation as allowed for swimming and boating activities by the WDNR in sensitive areas would also reduce vegetation cover conditions as was observed directly beneath the piers. However, the pier shading can effectively mimic the shading/cover typically provided by the aquatic plants and the piers can provide shading and cover that benefits the fishery. In addition, the two piers are permanent and there would not be the typical semi-annual lake bed impacts/disturbances that can sometimes occur from annually installing and removing piers. The piers have been in place for five years and appeared to have had no adverse impacts either by boat activities or by shading.



Ten boat slips are proposed for the Stoss property on the east side of Stringers Bridge Road. According to Mr. Stoss, the 10 boat slips and two piers have been confirmed by the Town as being allowable and are to be approved per local property rights based on the amount of shoreline footage owned by Mr. Stoss. A June 5, 2012 letter from Mills & Boehm, LLP to the Town of East Troy Plan Commission Members noted that the WDNR believed that the number of piers and watercraft that John (Mr. Stoss) had on his property had been grandfathered due to new legislation that went into effect on April 17th, 2012. Piers of any width that were less than 200 square feet or less were now exempt based on this legislation. Both of Mr. Stoss's piers are less than 200 square feet in size. However, any new piers would require a permit from WDNR. The Town of East Troy's pier ordinance was also reviewed by Mills & Boehm, LLP (February 28th, 2012 letter to Mr. Darrin Schwanke) and the Town of East Troy pier ordinance, based on this letter, should allow for up to five (moorings or piers) and up to 10 boats.

2.4 Conclusion

In conclusion, the Stoss property as observed and describe above represents and extremely small portion of Sensitive area 7 (less than two thirds of 1%). The proposed 10 boats slips and existing 2 piers will have much less of an impact than the WDNR approved mechanical submerged aquatic (weed) removal activity. Allowing two small already existing permanent piers to remain will also not have a significant adverse impact as there are numerous piers located throughout the Lake Beulah shoreline with many occurring within the Lake's Sensitive areas. It is my opinion that there will be no discernible impact to Lake Beulah of 10 boat slips and 2 existing piers on the Stoss property. The existing piers and watercraft already being used on the Stoss property have been grandfathered in by WDNR based on 2012 State of Wisconsin legislation (Mills and Boehm, LLP June 5, 2012). The Town of East Troy's pier ordinance would allow up to 10 boats per parcel and up to 5 moorings (piers) as per Mills and Boehm's February 28; 2012 letter.

References:

Dionne, K. & D. Helsel. 1994. Lake Beulah Sensitive Area Assessment: Final Report. Wisconsin Department of Natural Resources. 31pp.

Mills & Boehm, LLP, February 28, 2012. Letter to Mr. Darrin Schwanke in the Walworth County Land Use and Resource Management Department regarding Tax Parcel #:PET1800006A/N8828 Stringers Bridge Road.

Mills & Boehm, LLP, June 5, 2012. Letter to Town of East Troy Plan Commission Members regarding the Stoss rezone.

SEWRPC No. CA 507-64. 2012. Wetland boundary determination for John Stoss property (tax parcel No. PET 1800006A) at 8831 Stringers Bridge Road, Field inspection conducted by Dr. Donald Reed (SEWRPC), Ms. Pam Schense (WDNR) and Ms. Stacy L. Marshall (USACE).

If you have any questions please call.

Jhu Sarar

Sincerely,

J:13-0853

Beulah Lake boat piers and slips

(26)

TOWN OF EAST TROY

N9330 Stewart School Road • P.O. Box 872 East Troy, Wisconsin 53120 Telephone (262) 642-5386 Fax (262) 642-9701

February 25, 2014

To Whom It May Concern:

In the short amount of time I had to research this topic, it appears that "Fred's Tap" at N8831Stringers Bridge Road, East Troy WI, has held a Combination Class B Liquor license at these premises since 1974.

If I had additional time, it is likely that the Liquor license went back farther than 1974.

Kim M. Buchanan, WCMC

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Clerk/Treasurer
Town of East Troy