

ENROLLED ORDINANCE 164-77

AMEND THE DISTRICT ZONING MAP OF THE TOWN OF MERTON ZONING ORDINANCE AND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP FOR THE TOWN OF MERTON BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE SE ¼ AND SW ¼ OF SECTION 19, T8N, R18E, TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN, FROM THE B-2 LOCAL BUSINESS DISTRICT TO THE B-3 GENERAL BUSINESS DISTRICT (SZT-1692)

WHEREAS the subject matter of this Ordinance having been duly referred to and considered by the Waukesha County Park and Planning Commission, after Public Hearing, and the giving of requisite notice of said hearing and the recommendation thereon reported to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, Waukesha County, Wisconsin, as required by Sections 59.692 and 60.61 of the Wisconsin State Statutes.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that the Town of Merton Zoning Ordinance and the Waukesha County Shoreland and Floodland Protection Ordinance District Zoning Map for the Town of Merton, Waukesha County, Wisconsin, adopted on June 23, 1970, and the Town of Merton Zoning Code adopted on October 23, 2007, are hereby amended to conditionally rezone certain lands located in part of the SE ¼ and SW ¼ of Section 19, T8N, R18E, Town of Merton, from the B-2 Local Business District to the B-3 General Business District, and more specifically described in the “Staff Report and Recommendation” and map on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference SZT-1692 subject to the following condition:

- The rezone is conditioned upon being limited to the uses requested: cold storage, packaging of seafood products, value added production for seafood, and limited retail for “special event” sales of seafood to the local community. Any other proposed uses are subject to the zoning amendment process set forth in the Town of Merton Zoning Code and the Waukesha County Shoreland and Floodland Protection Ordinance.

BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Merton.

BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

BE IT FURTHER ORDAINED that all ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

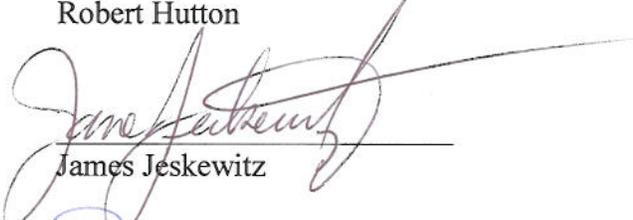
AMEND THE DISTRICT ZONING MAP OF THE TOWN OF MERTON ZONING ORDINANCE AND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP FOR THE TOWN OF MERTON BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE SE ¼ AND SW ¼ OF SECTION 19, T8N, R18E, TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN, FROM THE B-2 LOCAL BUSINESS DISTRICT TO THE B-3 GENERAL BUSINESS DISTRICT (SZT-1692)

Presented by:
Land Use, Parks, and Environment Committee


Fritz Ruf, Chair

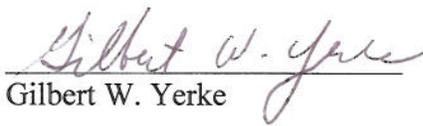

Janel Brandtjen

{ ABSENT }
Robert Hutton


James Jeskewitz


Walter L. Kolb

{ ABSENT }
Ted Rolfs


Gilbert W. Yerke

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: 2-26-2010

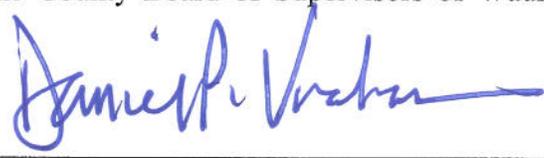

Kathy Nickolaus, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: X

Vetoed:

Date: 3-1-10

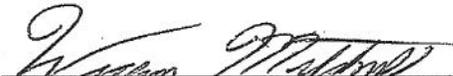

Daniel P. Vrakas, County Executive

COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Merton Zoning Code hereby recommends approval of (SZT-1692 Stonebank Properties, LLC.) in accordance with the attached "Staff Report and Recommendation".

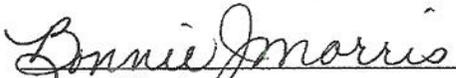
PARK AND PLANNING COMMISSION

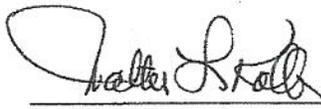
January 21, 2010


William Mitchell, Chairperson

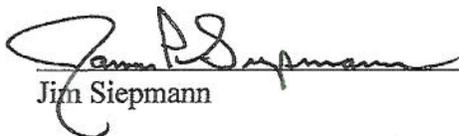

Robert Peregrine, Vice Chairperson


Pat Haukohl


Bonnie Morris


Walter Kolb


Gary Goodchild


Jim Siepmann

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE
STAFF REPORT AND RECOMMENDATION
ZONING MAP AMENDMENT

DATE: January 21, 2010

FILE NO: SZT-1692

OWNERS: Rocco Sapienza & Patrick Conway
1713 Delogier Dr.
Glenview, IL 60025

PETITIONER: Stonebank Properties LLC
N67 W33499 C.T.H. "K"
Oconomowoc, WI 53066

TAX KEY NO: MRTT 0364.957.001

LOCATION:

Part of the SE ¼ and part of the SW ¼ of Section 19, T8N, R18E, Town of Merton. More specifically, the property is located at N67 W33499 C.T.H. "K", Oconomowoc, WI 53066, containing approximately 3.62 acres.

PRESENT ZONING:

B-2 Local Business District under both the Town of Merton Zoning Ordinance and the Waukesha County Shoreland and Floodland Protection Ordinance.

PRESENT LAND USE:

The commercial building on the property has been vacant for 3+ years. It previously contained a business called Mr. Dee's which consisted of a cold storage facility. Mr. Dee's received Conditional Use approval on January 13, 2000 allowing its operation as a legal non-conforming use, since it did not fit in B-2 zoning. However, the Conditional Use approval was subject to several conditions. There is no evidence in the file that these conditions were ever satisfied and the permit was never actually issued. It should be noted, however, that a portion of the buildings have been in use over the past several months without the benefit of a permit.

PROPOSED ZONING:

B-3 General Business District under the Town of Merton Zoning Ordinance and Conditional B-3 under the Waukesha County Shoreland and Floodland Protection Ordinance.

PUBLIC HEARING DATE: November 4, 2009.

PUBLIC REACTION:

The Town received a call from a neighbor to the property concerned about the refrigerator trucks running when not permitted (i.e. Sundays) and wants that issue addressed. Other citizens at the hearing expressed concern about the amount of traffic coming and going from the property during special events (i.e. seafood sales).

TOWN PLAN COMMISSION AND TOWN BOARD ACTION:

On November 4, 2009 and December 2, 2009, the Town of Merton Plan Commission voted to recommend approval of the rezoning to the Town of Merton Board. On December 8, 2009 the Town of Merton Board adopted the amending ordinance without conditions.

CONFORMANCE WITH THE TOWN OF MERTON LAND USE PLAN AND THE COMPREHENSIVE DEVELOPMENT PLAN FOR WAUKESHA COUNTY:

This property is designated as Commercial on the Comprehensive Development Plan for Waukesha County (CDPWC). The Commercial designation is defined in the CDPWC as land devoted to retail, office, service activities, general business activities, and/or research and development and related off-street parking. The property is designated as Commercial on the Town of Merton Land Use Plan. The proposed amendments to the zoning will be consistent with both plans.

STAFF ANALYSIS:

History:

On March 14, 1984, the Town granted an extension of the existing Conditional Use Permit to the previous owner, David G. Robinson, to permit the construction of additional building space for frozen and fresh food storage and related indoor loading docks and office space and a conditional rezone from R-3 to B-2. These approvals were subject to several conditions. The addition was not constructed, the conditions never met and therefore the rezone never became effective and a Conditional Use Permit was never issued. Then on August 16, 1995, the Town Plan Commission approved the transfer of David Robinson's Conditional Use Permit to Mr. Dee's, a frozen food distributor. At that time, Mr. Dee's main product lines included hash browns, hash rounds, and onion rings. David Robinson continued to lease a portion of the building for the meat operation. In 1999, the property was rezoned from R-3 to B-2. Mr. Dee's received a Conditional Use approval from the County on January 13, 2000 that allowed Legal non-conforming Conditional Use status (since it did not fit under B-2 zoning) and the construction of an addition to the existing cold storage facility which was be used for a freezer warehouse and distribution center. However, the Conditional Use approval was subject to several conditions. There is no evidence in the file that these conditions were ever satisfied and once again, the permit was never actually issued. The addition was again never constructed. The County was subsequently notified in May 2009 by a perspective buyer that the uses on the property had been vacated for over a 12 month period. Section 3(o)(2)(B)(iii) of the Waukesha County Shoreland and Floodland Protection Ordinance states that if a nonconforming use or the use of a nonconforming structure is discontinued for 12 consecutive months or 18 cumulative months during a three-year period, any future use of the land or structure shall conform to the use regulations of the applicable district. Cold storage, warehouses and distributors are not permitted uses in the B-2 Zoning District, which the property is currently designated as; therefore, since the use had discontinued for a number of years, all rights to the previous legal non-conforming use had been lost. However, said uses are permitted in the B-3 General Business District. The County has been notifying prospective buyers that the property needs to be rezoned since late 2008.

Site conditions and proposal:

The property contains a 27,020 square foot cold storage facility, five loading docks, dry storage, and offices, and a separate 2,556 square foot residence. The existing cold storage facility is a nonconforming structure because it does not meet the road setback or the offset requirements from the west lot line. The property is served by private waste disposal systems and private wells. The surrounding zoning categories are residential to the east, west, and south, and B-2 (Town) along both the north and south sides of C.T.H. "K". The uses surrounding the site include a restaurant, two taverns, a bakery, gas station, general store, a church and Fire Department, along with residential uses (in the form of a mobile home park). The property is subject to shoreland regulations because it lies within 1,000 ft. of Okauchee Lake.

The owners are attempting to rezone the property in order to legalize and expand the existing uses on the property. The owners are proposing a business that consists of the following: a) cold storage, b) packaging of seafood products, c) Value Added production (i.e. stuffing salmon and tilapia with crab, lobster, and Florentine stuffing), and d) limited retail for "special event" sales of seafood to the local community at discounted prices during holidays.

The Town of Merton, at its meeting of August 5, 2009 approved a Plan of Operation and Conditional Use for the business. However, as mentioned above, it was not possible to issue a Conditional Use approval due to the issues outlined above. The owner subsequently attempted to submit documentation attempting to prove that the business had been operating within the last 12 months. However, the County contacted the State of Wisconsin Licensing Department and they do not have any record of a food processing or storage business occupying the premises since 2005. Their records indicate that Mr. Dees went out of business on October 5, 2005. Therefore, if a food storage business was occupying the buildings on the property since 2005, it was being done illegally. Additionally, the WE Energies summaries of the property indicate a greater utility usage in the last several months in comparison to previous months and years. This data appears to indicate that a use exists now that didn't previously. The current operation is illegal as no permits have been obtained and the use is not permitted in the zoning district.

Based on the above information, the County could not permit a cold storage operation unless the property is rezoned to the B-3 General Business District. In addition, the owner was notified again in writing on October 7, 2009 that if there is a business operating on the property illegally, the business activities must cease immediately or legal action may be taken. The owners subsequently applied for a rezone of the property and a site plan/plan of operation permit (assuming the rezone would be approved) on October 13, 2009. The joint public hearing was held on November 4, 2009. The Town failed to invite their Town Board to this hearing as required by their Ordinance, and the Town was required to hold another hearing between their Plan Commission and Town Board on December 2, 2009. The Town Board acted on December 8, 2009 approving the zoning change.

STAFF RECOMMENDATION:

It is the opinion of the Planning and Zoning Division Staff that this request be **approved subject to the following condition:**

The rezone is conditioned upon being limited to the uses requested: cold storage, packaging of seafood products, value added production for seafood, and limited retail for "special event" sales of seafood to the local community. Any other proposed uses are subject to the zoning amendment process set forth in the Town of Merton Zoning Code and the Waukesha County Shoreland and Floodland Protection Ordinance.

We feel that the proposed change to allow the existing and proposed uses to be conforming to the Ordinance is appropriate and has operated successfully on and off for at least 25 years, while also recognizing that other uses in the B-3 Zoning category are not appropriate for this mostly residential area. The use is consistent with the Town and County Land Use Plans. Further, the Site Plan/Plan of Operation review will control the specific activities on the site as related to parking, lighting, noise, hours of operation, etc.

Respectfully submitted,

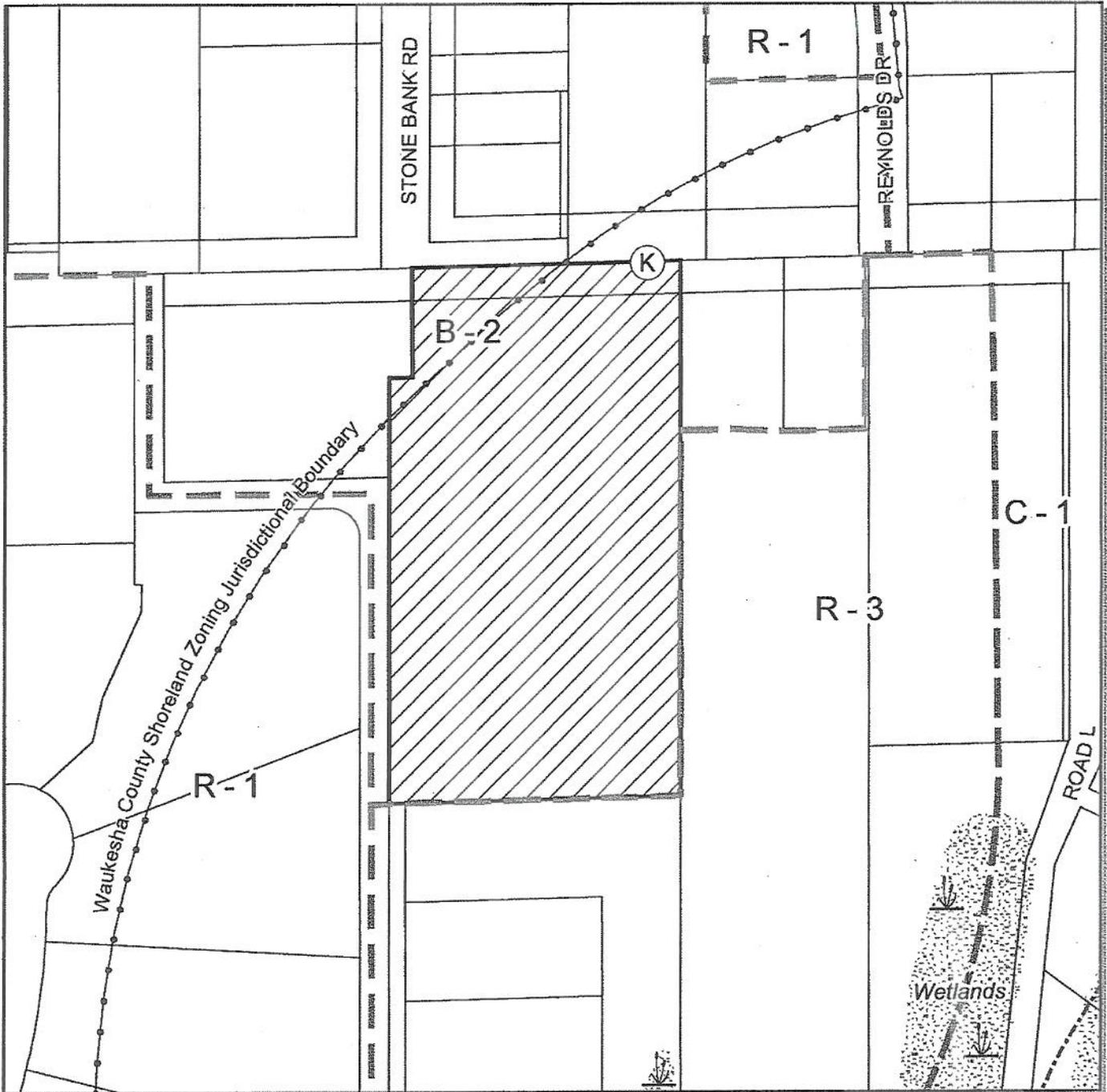
Sheri Lieffring / kab

Sheri Lieffring
Senior Land Use Specialist

Attachments: Map
Town Ordinance

ZONING MAP AMENDMENT

PART OF THE SE 1/4 AND SW 1/4 OF SECTION 19 TOWN OF MERTON



CONDITIONAL COUNTY AND TOWN ZONING CHANGE FROM B-2 LOCAL BUSINESS DISTRICT TO B-3 GENERAL BUSINESS DISTRICT

FILE..... SZT-1692

DATE..... 01-21-10

AREA OF CHANGE..... 3.62 ACRES

TAX KEY NUMBER..... MRTT 0364.957.001



1 inch = 150 feet



Prepared by the Waukesha County Department of Parks and Land Use

164-0-080

City

ORDINANCE NO. _____

RECEIVED

DEC 10 2009

DEPT OF PARKS & LAND USE

AN ORDINANCE TO AMEND THE BOUNDARIES OF THE B-3 GENERAL BUSINESS DISTRICT AS SHOWN ON THE DISTRICT MAP, TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN

The Town Board of Supervisors of the Town of Merton, Waukesha County, Wisconsin, do ordain as follows:

SECTION 1. The District Zoning Map of the Town of Merton, Wisconsin, dated April 9, 1974, as revised, and notations and references thereon, is hereby amended to transfer the following described lands from B-2 Local Business District to B-3 General Business District:

Property Description

SEE ATTACHED LEGAL DESCRIPTION

SECTION 2. EFFECTIVE DATE. This ordinance shall take effect upon passage, posting or publication as required by law, and the final effective date being the date of Waukesha County Board approval.

DATED: December 8, 2009

TOWN OF MERTON
By: [Signature]
Richard Morris, Chairman

ATTEST:

[Signature]
Susan J. Oman, Clerk

Date Adopted: 12/8/09

Date Published: 12/9/09

Effective Date: 12/9/09



SCALE : 1" = 30'

SUGGESTED LEGAL DESCRIPTION OF PARCEL A:

Being a part of the SE 1/4 and SW 1/4 of Section 19, T8N, R18E, Town of Merton, Waukesha County, Wisconsin, more fully described as follows:

Commencing at the center of said Section 19; thence N.88°-35'-00"E., along the north line of said SE 1/4 and centerline of C.T.H. "K", 6.97 feet to the point of beginning of the hereinafter described lands; thence continuing along said north line and centerline, N.88°-35'-00"E., 273.53 feet to a point; thence S.00°-09'-43"E., along a line parallel to the west line of said SE 1/4, 540.00 feet to a point; thence S.88°-35'-00"W., 60.50 feet to a point; thence N.00°-09'-43"W., 100.00 feet to a point; thence S.88°-35'-00"W., 220.00 feet to a point being on the west line of said SE 1/4; thence S.00°-09'-43"E., along said west line, 100.00 feet to a point; thence S.88°-35'-00"W., 16.50 feet to a point being on the easterly right-of-way line of Lake View Drive, a private road; thence N.00°-09'-43"W., along said easterly line, and as extended, 429.52 feet to a point; thence N.89°-50'-48"E., 23.47 feet to a point; thence N.00°-09'-43"W., 111.00 feet to the north line of said SE 1/4 and the place of beginning. Said lands containing 135,750 square feet (3.116 acres) to the centerline of C.T.H. "K". Reserving therefrom the northerly 33.00 feet for public roadway purposes.

The above described lands subject to a proposed 66 ft. wide ingress/egress easement described as follows:

Commencing at the center of said Section 19; thence N.88°-35'-00"E., along the North line of said SE 1/4 and centerline of C.T.H. "K", 200.00 feet to the point of beginning of the hereinafter described easement; thence S.00°-09'-43"E., 540.00 feet to a point; thence N.88°-35'-00"E., 66.00 feet to a point; thence N.00°-09'-43"W., 540.00 feet to the North line of said SE 1/4; thence S.88°-35'-00"W., along said North line, 66.00 feet to the place of beginning.



164-0-080

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-02/23/10

(ORD) NUMBER-1640080

1 D. FALSTAD.....AYE
 3 R. HUTTON.....AYE
 5 J. JESKEWITZ.....AYE
 7 P. HAUKOHL.....AYE
 9 J. HEINRICH.....AYE
 11 F. RUF.....AYE
 13 P. DECKER.....AYE
 15 P. MEYERS.....AYE
 17 J. TORTOMASI.....AYE
 19 S. WIMMER.....AYE
 21 W. ZABOROWSKI.....AYE
 23 J. PLEDL.....
 25 G. YERKE.....AYE

2 T. ROLFS.....
 4 J. DWYER.....AYE
 6 J. BRANDTJEN.....AYE
 8 T. SCHELLINGER....AYE
 10 D. SWAN.....AYE
 12 P. WOLFF.....AYE
 14 B. MORRIS.....AYE
 16 D. PAULSON.....AYE
 18 K. CUMMINGS.....AYE
 20 P. JASKE.....AYE
 22 P. GUNDRUM.....AYE
 24 W. KOLB.....AYE

TOTAL AYES-23

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS X

TOTAL VOTES-23