

ENROLLED ORDINANCE 167-13

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF MUKWONAGO AND THE TOWN OF MUKWONAGO ZONING ORDINANCE BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NE ¼ OF SECTION 4, T5N, R18E, TOWN OF MUKWONAGO, WAUKESHA COUNTY, WISCONSIN, FROM THE A-2 RURAL HOME DISTRICT (COUNTY) AND THE S-E SUBURBAN ESTATE DISTRICT (TOWN) TO THE R-1 RESIDENTIAL DISTRICT (TOWN AND COUNTY) (SZT-1732)

WHEREAS after proper notice was given a public hearing was held and the subject matter of this Ordinance was approved by the Mukwonago Town Board on April 18, 2012, and

WHEREAS the matter was referred to and considered by the Waukesha County Park and Planning Commission, which recommended approval and reported that recommendation to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, as required by Sections 59.692 and 60.61, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Waukesha County Shoreland and Floodland Protection Ordinance District Zoning Map for the Town of Mukwonago, Waukesha County, Wisconsin, adopted on June 23, 1970, and the Town of Mukwonago Zoning Ordinance adopted on February 27, 2007, are hereby amended to conditionally rezone certain lands located in part of the NE ¼ of Section 4, T5N, R18E, Town of Mukwonago, from the A-2 Rural Home District (County) and the S-E Suburban Estate District (Town) to the R-1 Residential District (Town and County), 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-1732 subject to the following conditions:

1. The property owner shall obtain approval from all reviewing and objecting agencies for a two-lot land division (Certified Survey Map) that is generally consistent with the lot layout as depicted in Exhibit “A” to the Staff Report and Recommendation dated May 5, 2012 with regard to lot size and configuration.
2. A restriction shall be added to the face of the Certified Survey Map stating that the property cannot be further divided, in accordance with the Rezone Amendment SZT-1732 and Land Use Plan Amendment-2012.
3. The property owner shall record the Certified Survey Map of the approved two-lot land division with the Waukesha County Register of Deeds office no later than April 18, 2013, which is one year from the date of the Town’s decision.
4. A Driveway Maintenance Agreement shall be prepared and reviewed and approved by the Town and Waukesha County Planning and Zoning Division Staff.

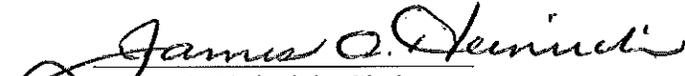
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Mukwonago.

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 WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF MUKWONAGO AND THE TOWN OF MUKWONAGO ZONING ORDINANCE BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NE ¼ OF SECTION 4, T5N, R18E, TOWN OF MUKWONAGO, WAUKESHA COUNTY, WISCONSIN, FROM THE A-2 RURAL HOME DISTRICT (COUNTY) AND THE S-E SUBURBAN ESTATE DISTRICT (TOWN) TO THE R-1 RESIDENTIAL DISTRICT (TOWN AND COUNTY) (SZT-1732)

Presented by:
Land Use, Parks, and Environment Committee


James A. Heinrich, Chair

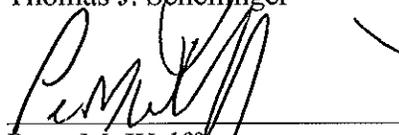

Jim Batzko


Walter L. Kolb

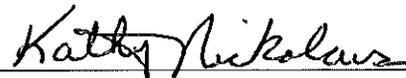

Pamela Meyer


Fritz Rul


Thomas J. Schellinger


Peter M. Wolff

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

Date: 7-1-2012, 
Kathy Nickolaus, County Clerk

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

Approved: x

Vetoed: _____

Date: 7-2-12, 
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 Mukwonago Zoning Ordinance, hereby recommends **approval** of SZT-1732 (James and Karen McNelly) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

May 17, 2012



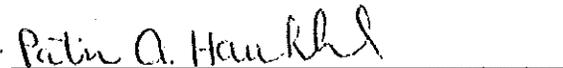
Gary Goodchild, Chairperson



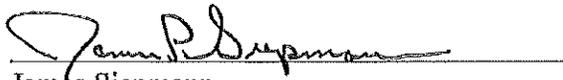
Robert Peregrine, Vice Chairperson



Walter Kolb



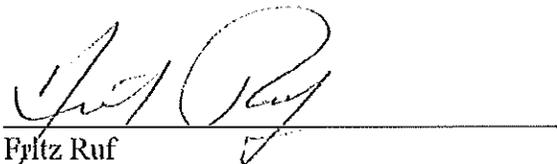
Patricia Haukohl



James Siepmann

(absent)

William Mitchell



Filtz Ruf

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

DATE: May 17, 2012

FILE NO.: SZT-1732

TAX KEY NO.: MUKT 1885.994.005

OWNER/PETITIONER: James and Karen McNelly
W312 S6510 Willow Spring Drive
Mukwonago, WI 53149

LOCATION:

The parcel is located in part of the NE ¼ of Section 4, T5N, R18E, Town of Mukwonago, containing approximately 5.8 acres.

PRESENT ZONING CLASSIFICATION:

A-2 Rural Home District and C-1 Conservancy District (County)
S-E Suburban Estate District and C-1 Conservancy District (Town)

PRESENT LAND USE:

Residential

PROPOSED ZONING:

R-1 Residential District and C-1 Conservancy District (Town and County)

PROPOSED LAND USE:

Divide the 5.8 acre parcel into two (2) parcels for single-family residential purposes.

PUBLIC HEARING DATE:

April 4, 2012

PUBLIC REACTION:

The adjoining property owner to the north requested information on the proposed lot lines and had concerns related to the utility easement that crosses her property, which benefits the McNelly residence. She wanted the McNelly's to understand that she is pursuing removal of the easement across her property and she doesn't want the new home to rely on the easement for utility purposes. *(This issue is beyond the scope of Planning and Zoning. The adjoining property owner and the McNelly's understand that there may be future dialogue and/or litigation regarding the existing utility easement between themselves.)*

The property owner that lives across the street from the McNelly's questioned the location of a proposed driveway, in the event the existing driveway is ever vacated. They are accustomed to looking across the road at a wooded area and not a driveway entrance.

TOWN PLAN COMMISSION ACTION:

On April 4, 2012, the Town Plan Commission unanimously recommended approval of the rezoning request to the Waukesha County Park and Planning Commission and Town Board.

TOWN BOARD ACTION:

On April 18, 2012, the Town Board approved the rezoning request, subject to the following conditions:

1. The Waukesha County Board approves the rezoning.
2. The property owner obtains approval from all reviewing and objecting agencies for a two-lot land division that is generally consistent with the lot layout as depicted in Exhibit "A" with regard to lot size and configuration.
3. The property owner records the Certified Survey Map of the approved two-lot land division with the Waukesha County Register of Deeds office within one year of the date of this decision.

The Town of Mukwonago Ordinance to rezone the property is attached as Exhibit "B".

COMPLIANCE WITH THE WAUKESHA COUNTY DEVELOPMENT PLAN AND THE TOWN OF MUKWONAGO LAND USE PLAN:

Both the Town and County amended their Plans in 2012 to modify the land use designation for the north part of the property from the Suburban II Density Residential (3.0 to 4.9 acres per dwelling unit) category to the Low Density Residential (20,000 sq. ft. to 1.4 acres per dwelling unit) category to accommodate the proposed land division. The approval was subject to the subject property being limited to a maximum of two (2) parcels. Lands designated as Primary Environmental Corridor and Other Open Lands to be Preserved were not modified.

OTHER CONSIDERATIONS:

The subject property contains 5.8 acres on the southwest side of Willow Springs Lake in the Town of Mukwonago. The property contains some steep slopes, upland Primary Environmental Corridor, wetland and floodplain. There is an existing residence, detached garage, barn, and silo on the property. The existing residence and detached garage are located on an upland area near the lake, surrounded by floodplain and wetland. The existing driveway traverses through the wetland and floodplain. The property is served by a private sewage system and well.

The petitioners are proposing to divide the property into two (2) parcels so that their daughter can build a home on the north part of the property, while the petitioners will retain their existing home on the south part of the property near Willow Springs Lake. Both the Town and County existing zoning designations require a minimum lot size of (three) 3 acres. The petitioners are proposing to retain the southernmost 3.5 acres, which will contain all of the existing structures. Therefore, the proposed lot to the south will not require an amendment to the existing zoning district and was not part of the recent land use plan amendment. The proposed north lot will be approximately 2.3 acres in size. Since the lot cannot meet the minimum three (3)-acre minimum lot size requirement, an amendment to the zoning is required. Therefore, the petitioners are proposing to rezone the north lot to R-1 Residential (Town and County), which requires a minimum lot size of one (1) acre and an average width of 150 ft. The proposed zoning category would be consistent with the surrounding neighborhood to the north. SEWRPC recently inventoried the wetland and Primary Environmental Corridor (PEC) on the site.

The petitioners have already submitted a Certified Survey Map for review and approval, which shows a proposed building envelope that is located well to the west of the wetlands, PEC and 100-year floodplain. This is the higher part of the site, well above the slope that leads to the lake. The petitioners will need to obtain an easement to continue using the existing driveway which extends from the north lot line of the proposed north lot to the existing residence on the proposed south lot. Relocating the driveway or creating a second drive would be costly and possibly prohibited due to wetland and floodplain regulations. Planning and Zoning Division Staff feels that given the wetland and floodplain constraints, a shared driveway is a better alternative to creation of a second driveway.

STAFF RECOMMENDATION:

It is the opinion of the Planning and Zoning Division Staff that the request to rezone the north part of the property be approved subject to the following conditions:

1. The property owner shall obtain approval from all reviewing and objecting agencies for a two-lot land division (Certified Survey Map) that is generally consistent with the lot layout as depicted in Exhibit "A" with regard to lot size and configuration.
2. A restriction shall be added to the face of the Certified Survey Map stating that the property cannot be further divided, in accordance with the Rezone Amendment SZT-1732 and Land Use Plan Amendment-2012.
3. The property owner shall record the Certified Survey Map of the approved two-lot land division with the Waukesha County Register of Deeds office no later than April 18, 2013, which is one year from the date of the Town's decision.
4. A Driveway Maintenance Agreement shall be prepared and reviewed and approved by the Town and Waukesha County Planning and Zoning Division Staff.

As conditioned, the proposed rezoning is consistent with the recently amended County Development Plan. The proposed rezoning will allow for the creation of one (1) additional residential lot while still preserving the natural resources on the property. The proposed rezoning will match that which exists for similar adjacent lakefront parcels to the north of the subject lands.

Respectfully submitted,

Amy Barrows

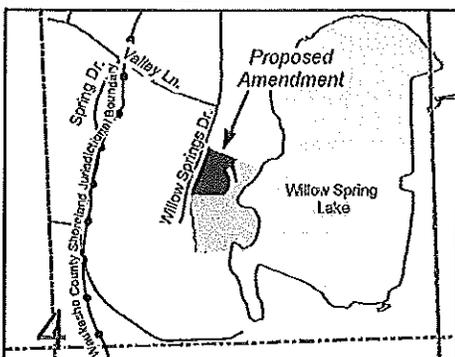
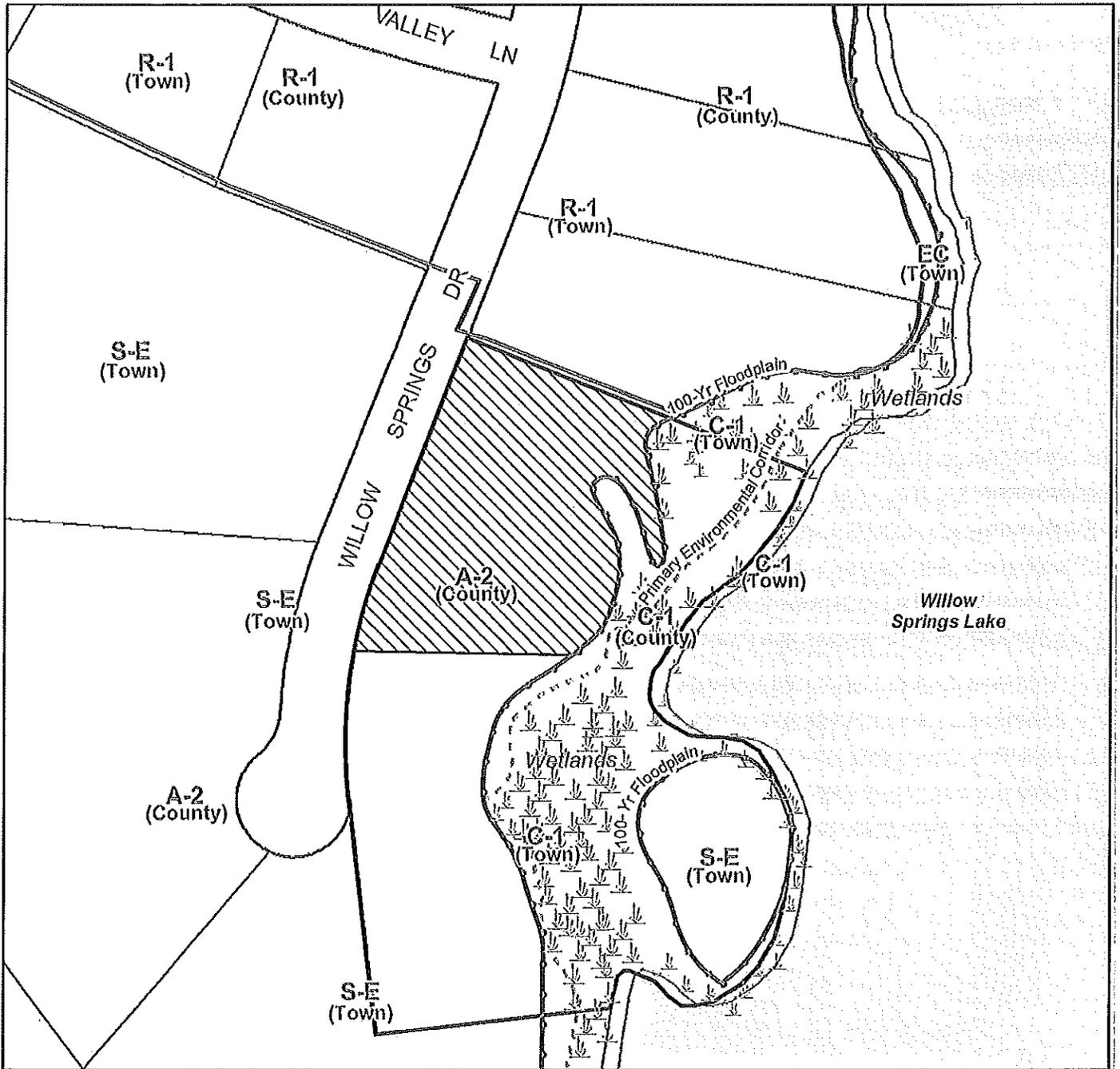
Amy Barrows
Senior Land Use Specialist

Enclosure: Exhibits "A" and "B"

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ZONING MAP AMENDMENT

PART OF THE NE 1/4 OF SECTION 4
TOWN OF MUKWONAGO



COUNTY ZONING AMENDMENT FROM A-2 RURAL HOME DISTRICT TO R-1 RESIDENTIAL DISTRICT AND TOWN ZONING CHANGE FROM S-E SUBURBAN ESTATE DISTRICT TO R-1 RESIDENTIAL DISTRICT
C-1 CONSERVANCY DISTRICT WILL REMAIN UNCHANGED

PETITIONER.....JAMES MCNELLY
DATE OF PLAN COMM. CONSIDERATION.....05-17-12
AREA OF CHANGE.....1.57 ACRES
TAX KEY NUMBER.....MUKT1885.994.005



1 Inch = 150 feet
0 75 150 Feet

Prepared by the Waukesha County Department of Parks and Land Use

167-0-013

6.

EXHIBIT "B"

STATE OF WISCONSIN

TOWN OF MUKWONAGO

WAUKESHA COUNTY

ORDINANCE NO. 2012-__

AN ORDINANCE TO REZONE A PORTION OF A CERTAIN PROPERTY IN THE NE 1/4 OF SECTION 4, T5N R18E, IN THE TOWN OF MUKWONAGO AND TO AMEND THE ZONING MAP OF THE TOWN OF MUKWONAGO PURSUANT TO SEC. 82-51 OF THE ZONING ORDINANCE FOR THE TOWN OF MUKWONAGO

WHEREAS, James and Karen McNelly (herein referred to as "property owner") own Parcel 1 of CSM 2120A generally located at W312 S6510 Willow Spring Drive (herein referred to as "subject property"); and

WHEREAS, the property owner has submitted a petition to the Town requesting that the northern portion of the subject property currently classified as Suburban Estates (SE) District be rezoned to Residential (R-1) District; and

WHEREAS, such area to be rezoned coincides with Lot 2 of a certified survey map as proposed by the property owners which is attached hereto as Exhibit A; and

WHEREAS, the rezoning petition has been submitted to the Town of Mukwonago Plan Commission for report and recommendation; and

WHEREAS, required public notice of the public hearing has been provided consistent with Section 62.23 of the Wisconsin Statutes and the Town's zoning code; and

WHEREAS, the Town of Mukwonago Town Board and the Town of Mukwonago Plan Commission conducted a joint public hearing on April 4, 2012; and

WHEREAS, the Town of Mukwonago Plan Commission has recommended to the Town of Mukwonago Town Board that said rezoning change be made under certain conditions; and

WHEREAS, The Town Board finds that the proposed zoning is consistent with the Town's comprehensive plan; and

WHEREAS, the Town of Mukwonago Town Board, after careful review and upon consideration of the recommendation of the Town of Mukwonago Plan Commission, having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration and having based its determination on the effect of granting of said rezoning on the health, safety, and welfare of the community, and the immediate neighborhood in which said use will be located, and having given due consideration to the municipal problems involved, as well as the impact on the surrounding properties as to the noise, dust, smoke, odor and others, has hereby determined that the rezoning will not violate the spirit or intent the zoning ordinance for the Town of Mukwonago, will not be contrary to the public health, safety or general welfare of the Town of Mukwonago, will not be hazardous, harmful, noxious, offensive or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a substantial adverse affect on the property values and general desirability of the neighborhood as long as the development is conducted pursuant to the following conditions and is in strict compliance with the same.

NOW, THEREFORE, the Town of Mukwonago Town Board, Waukesha County, Wisconsin, ordains as follows:

167-0-013

8.

SECTION 1: ZONING MAP CHANGE

The area of Lot 2 of the certified survey map, as may be approved, that is currently designated as Suburban Estates (SE) on the Town's zoning map is hereby conditionally rezoned to Residential (R-1) and the zoning map is hereby conditionally amended to incorporate such change.

SECTION 2: CONDITIONS OF REZONING

The rezoning of the subject property as specified herein and the amendment of the zoning map of the Town of Mukwonago are conditioned on the following:

1. The Waukesha County Board approves the rezoning.
2. The property owner obtains approval from all reviewing and objecting agencies for a two-lot land division that is generally consistent with the lot layout as depicted in Exhibit A with regard to lot size and configuration.
3. The property owner records the certified survey map of the approved two-lot land division with the Waukesha County register of deeds office within one year of the date of this decision.

SECTION 3: CERTIFICATION

Upon certification by the Town Clerk that the aforementioned condition has been satisfied, the Town Planner shall change the zoning classification of the subject properties on the Town of Mukwonago zoning map as indicated herein.

SECTION 4: SEVERABILITY

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed to those terms that conflict.

SECTION 5: EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage and posting or publication as provided by law subject to the condition stated in Section 2, and this ordinance is null and void and the current zoning shall be in effect with no further notice if such condition is not satisfied within one year of the date of this decision.

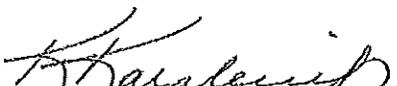
Approved this 18th day of April, 2012

TOWN OF MUKWONAGO



Dave Dubey, Town Chairman

ATTEST:



Kathy Karalewitz, Town Clerk

Published and posted this 9 day of May 2012

167-0-013

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-06/26/12

(ORD) NUMBER-1670013

- 1 C. SLATTERY.....AYE
- 3 R. MORRIS.....AYE
- 5 J. BRANDTJEN.....AYE
- 7 J. GRANT.....AYE
- 9 J. HEINRICH.....AYE
- 11 F. RUF.....AYE
- 13 P. DECKER.....AYE
- 15 W. KOLB.....AYE
- 17 D. PAULSON.....
- 19 C. CUMMINGS.....AYE
- 21 W. ZABOROWSKI.....AYE
- 23 K. HAMMITT.....AYE
- 25 G. YERKE.....AYE

- 2 D. FALSTAD.....AYE
- 4 J. BATZKO.....AYE
- 6 J. JESKEWITZ.....AYE
- 8 P. HAUKOHL.....AYE
- 10 D. SWAN.....AYE
- 12 P. WOLFF.....AYE
- 14 P. MEYER.....AYE
- 16 M. CROWLEY.....AYE
- 18 L. NELSON.....AYE
- 20 T. SCHELLINGER....AYE
- 22 P. JASKE.....
- 24 D. DRAEGER.....AYE

TOTAL AYES-23

TOTAL NAYS-00

CARRIED X

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-23