

ENROLLED ORDINANCE 177-85

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF MERTON AND THE TOWN OF MERTON ZONING ORDINANCE BY REVISING THE CONDITIONS OF A PREVIOUS CONDITIONAL REZONING (ENROLLED ORDINANCE NO. 167-76) FOR CERTAIN LANDS LOCATED IN PART OF THE SE ¼ AND SW ¼ OF SECTION 19, T8N, R18E, TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN (RZ108)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Town on December 7, 2022; 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 60.62, 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 Merton, Waukesha County, Wisconsin, adopted on June 23, 1970, and the Town of Merton Zoning Ordinance adopted on October 23, 2007, are hereby amended to revise the conditions of a previous conditional rezoning (Enrolled Ordinance No. 167-76) for certain lands located in part of the SE ¼ and SW ¼ of Section 19, T8N, R18E, Town of Merton, Waukesha County, Wisconsin 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 RZ108, subject to the following conditions:

1. The rezone is conditioned upon being limited to personal and commercial storage uses (including cold and heated storage) and low impact commercial uses as determined by the Town of Merton and Waukesha County through the Site Plan/Plan of Operation process.
2. Residential use shall only be permitted in conjunction with or accessory to an otherwise permitted use. The approval of this request will allow the property to be used for limited commercial or storage uses with living quarters for an onsite manager but will not allow other more intense uses normally permitted in the B-3 Zoning District.

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

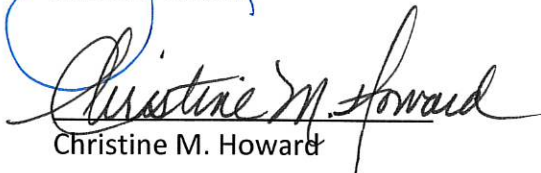
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF MERTON AND THE TOWN OF MERTON ZONING ORDINANCE BY REVISING THE CONDITIONS OF A PREVIOUS CONDITIONAL REZONING (ENROLLED ORDINANCE NO. 167-76) FOR CERTAIN LANDS LOCATED IN PART OF THE SE¼ AND SW ¼ OF SECTION 19, T8N, R18E, TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN, (RZ108)

Presented by:  
Land Use, Parks, and Environment Committee

  
Tyler J. Foti, Chair

  
Jennifer Grant

  
Christine M. Howard

**Absent**


Robert L. Kolb

  
Brian Meier

  
Chris Mommaerts

  
Gary J. Szpara

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

Date: 3/3/23,   
Margaret Wartman, County Clerk

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

Approved: X  
Vetoed: \_\_\_\_\_

Date: 3/3/2023,   
Paul Farrow, County Executive

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

**DATE:** January 19, 2023

**FILE NO.:** RZ108

**OWNER:** Kirk Noll  
N67 W33499 County Road K  
Oconomowoc, WI 53066

**APPLICANT:** Adam Polczynski  
6917 Hwy 83  
Hartland, WI 53029

**TAX KEY NO.:** MRTT 0363.099.002

**LOCATION:**

The subject property is described as Lot 1, Certified Survey Map No. 10921, part of the SE ¼ and SW ¼ of Section 19, T8N, R18E, Town of Merton. More specifically, the property is located at N67 W33499 CTH K, containing approximately 3.04 acres.

**EXISTING ZONING:**

Conditional B-3 General Business District (Town and County)

**PROPOSED ZONING:**

Conditional B-3 General Business District-amend conditions (Town and County)

**EXISTING LAND USE:**

Pallet resale business and residence

**PROPOSED LAND USE:**

Revise the conditions of a previous conditional rezoning request (Enrolled Ordinance No. 167-76, SZT-1692A).

**PUBLIC HEARING DATE:**

December 7, 2022

**PUBLIC REACTION:**

None.

**TOWN PLAN COMMISSION AND TOWN BOARD ACTION:**

On December 7, 2022, the Town of Merton Plan Commission recommended approval of the request to amend the conditions of RZ-1692A to allow the petitioner to sell returned merchandise from major retailers.

**COMPLIANCE WITH THE COMPREHENSIVE DEVELOPMENT PLAN (CDP) FOR WAUKESHA COUNTY AND THE TOWN OF MERTON LAND USE PLAN:**

The Comprehensive Land Use Plans for Waukesha County and the Town of Merton designate the property as Commercial and Office Park. The Commercial designation is defined in the CDP as land devoted to retail, office, service activities, general business activities, and/or research and development and related off-street parking. The proposed amendments to the zoning will be consistent with both plans.

**STAFF ANALYSIS:**

In October 2009, a request to rezone the property to the B-3 General Business zoning district (RZ-1692) was submitted to allow a cold storage, food packaging and food processing operation. The rezoning was approved conditioned upon the property 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. The condition also stated that 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. It should be noted that the petitioners applied for Site Plan/Plan of Operation approval for the cold storage operation but did not follow through or comply with the conditions and did not obtain permits to operate.

In 2011, a Certified Survey Map was approved and recorded which split off a parcel containing a single-family residence from the south end of the site.

In September 2012, the owner requested to amend the conditional B-3 zoning on the property (RZ-1692A) to allow the property to be used for warehousing of dry goods that would include paper products, machinery, molds for parts, etc. In addition, the petitioner proposed to convert the area on the north end of the building into a residence for an on-site employee or manager. The amendment was approved, subject to two (2) conditions:

1. The rezone is conditioned upon being limited to personal and commercial storage uses (including cold and heated storage) of the owner and/or operator and shall not be rented or leased to the general public for multi-tenant or mini-warehouse type storage. Any other proposed uses are subject to the zoning amendment process set forth in the Town of Merton Zoning Ordinance and the Waukesha County Shoreland and Floodland Protection Ordinance.
2. Residential use shall only be permitted in conjunction with or accessory to an otherwise permitted use. The approval of this request will allow the property to be used for dry warehousing and storage with living quarters for an onsite manager but will not allow other more intense uses normally permitted in the B-3 Zoning District.

The property contains a 27,020 square foot cold storage facility, five loading docks, dry storage, and offices. A residence also exists on the north end of the property, attached to the warehouse building. 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 CTH K. There are a number of single-family residential structures in the area, with a mobile home park to the east and a tavern to the west. An ingress/egress easement runs through the parking lot and provides access to the residential properties to the south.

The petitioner is requesting to amend the conditional B-3 zoning on the property to allow a tenant to operate a resale business (Hartland Liquidation) in the southern portion of the warehouse building, which is an otherwise allowable use in the B-3 District. The residence will be utilized by the property owner and the north portion of the warehouse building will be used for personal storage of the owner. The resale business has been operating out of the site for a few years, and the Town approved a Site Plan/Plan of Operation for the business in 2022. The petitioners receive 1-2 deliveries a week of pallets containing returned merchandise from major retailers, which are then resold to the public, generally through online sales. Customers come to the site to pick up merchandise and there are limited retail hours for the general public to browse and purchase goods, outside of the online sales. All merchandise is stored indoors and there are striped parking spaces for customers.

**STAFF RECOMMENDATION:**

Based upon the above analysis, Planning and Zoning Division Staff recommends **conditional approval** of the request, subject to the following conditions:

1. The rezone is conditioned upon being limited to personal and commercial storage uses (including cold and heated storage) and low impact commercial uses as determined by the Town of Merton Waukesha County through the Site Plan/Plan of Operation process.
2. Residential use shall only be permitted in conjunction with or accessory to an otherwise permitted use. The approval of this request will allow the property to be used for limited commercial or storage uses with living quarters for an onsite manager but will not allow other more intense uses normally permitted in the B-3 Zoning District.

The proposed use is similar to the previous uses and is consistent with the Town of Merton Land Use Plan and the Waukesha County Comprehensive Development Plan. Furthermore, the use should be compatible with immediate surrounding land uses and the Site Plan/Plan of Operation review will control the specific activities on the site as related to parking, lighting, noise, hours of operation, signage, etc. The proposed modification of conditions will allow for additional business types to operate within the large building without the necessity of the going through additional rezoning proceedings provided the town and county approve of the use through the Site Plan process.

Respectfully submitted,

*Jacob Heermans*

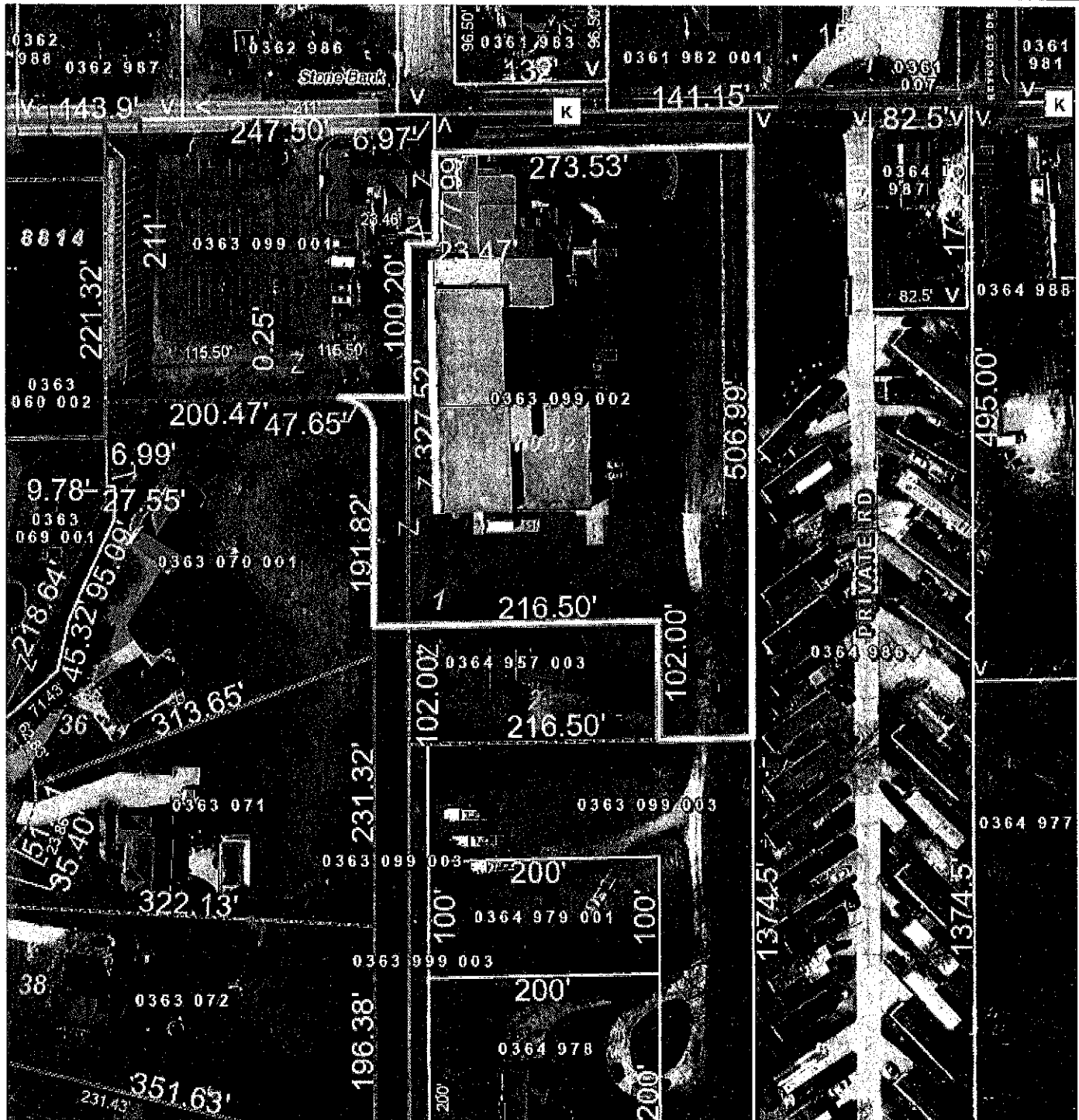
Jacob Heermans  
Senior Land Use Specialist

Attachments: Exhibit A – Site Plan  
Map

N:\PRKANDLU\Planning And Zoning\Rezoning\Staff Reports\RZ108 Noll Mrt.Doc



Noll\_Hartland Liq



0 119.44 Feet

Notes:

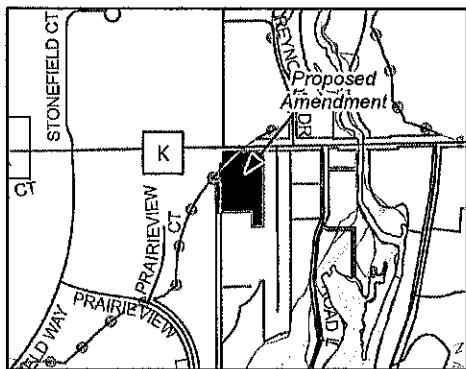
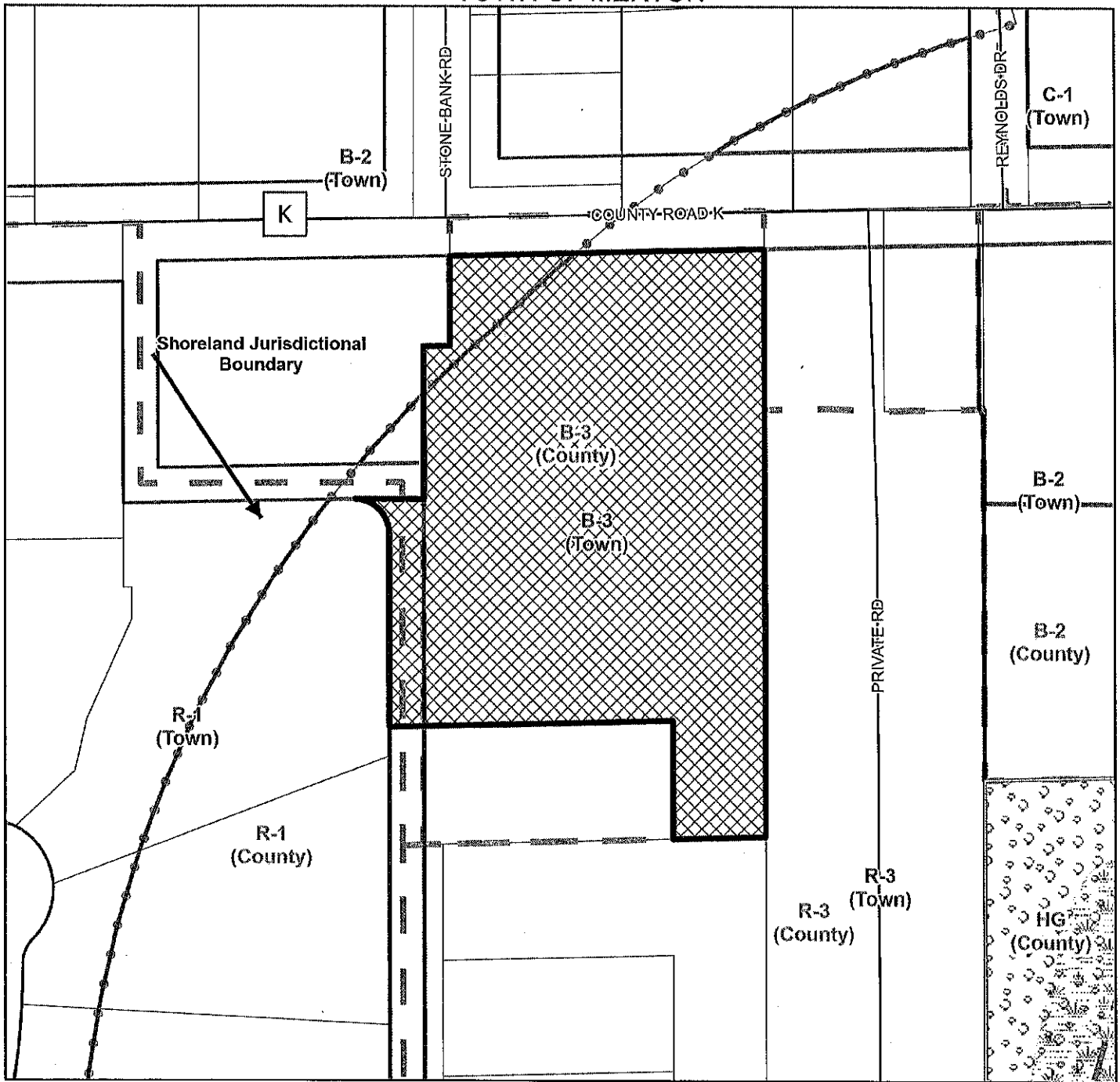
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Printed: 1/4/2023

# ZONING AMENDMENT

PT OF THE SOUTHWEST 1/4 AND SOUTHEAST 1/4, SECTION 19,  
TOWN OF MERTON




**CONDITIONAL TOWN AND COUNTY ZONING AMENDMENT - AMEND B-3 GENERAL BUSINESS DISTRICT CONDITIONS (3 AC)**

FILE.....RZ108  
 DATE OF PLAN COMMISSION.....1/19/23  
 AREA OF CHANGE.....3.0 ACRES  
 TAX KEY NUMBER.....MRRTT 0363.099.002

0      100      200 Feet

Prepared by the Waukesha County Department of Parks and Land Use




**VOTE RESULTS**

YES
  NO
  ABSTAIN
  ABSENT

**Ordinance 177-O-092**

Ordinance 177-O-092: Amend The Waukesha County Shoreland And Floodland Protection Ordinance District Town Of Merton Zoning Ordinance By Revising The Conditions Of A Previous Conditional Rezoning (Enrolled Ordinance No. 167-76) For Certain Lands Located In Part Of The SE 1/4 And SW 1/4 Of Section 19, T8N, R18E, Town Of Merton, Waukesha County, Wisconsin, (RZ108)

 **Passed By Majority Vote**

D1 - Foti	AYE	D10 - Thieme	ABSENT	D19 - Enriquez	AYE
D2 - Weil	AYE	D11 - Howard	AYE	D20 - Schellinger	AYE
D3 - Morris	AYE	D12 - Wolff	AYE	D21 - Gaughan	AYE
D4 - Batzko	ABSENT	D13 - Decker	AYE	D22 - Szpara	AYE
D5 - Grant	ABSENT	D14 - Mommaerts	AYE	D23 - Hammitt	AYE
D6 - Walz	AYE	D15 - Kolb	AYE	D24 - Bangs	AYE
D7 - LaFontain	AYE	D16 - Crowley	AYE	D25 - Johnson	AYE
D8 - Vacant	ABSENT	D17 - Meier	ABSENT		
D9 - Heinrich	AYE	D18 - Nelson	AYE		