

ENROLLED ORDINANCE 169-43

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF MERTON BY CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF THE NW ¼ OF SECTION 31, T8N, R18E, TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN, FROM THE R-1 RESIDENTIAL DISTRICT TO THE R-3 RESIDENTIAL DISTRICT (SZ-1785)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Merton Town Board on June 23, 2014, 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 Section 59.692, 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 by the Waukesha County Board of Supervisors on June 23, 1970, is hereby amended to conditionally rezone from the R-1 Residential District to the R-3 Residential District certain lands located in part of the NW ¼ of Section 31, T8N, R18E, Town of Merton, 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 ZT-1785, is hereby approved, subject to the following conditions:

1. A Certified Survey Map to divide the lands must be recorded in the Waukesha County Register of Deeds Office by no later than July 17, 2016.
2. A restriction must be placed on the Certified Survey Map stating that no trees within 75 feet of Okauchee Lake may be removed from Lots 1 or 2, with the exception of an access/view corridor in accordance with the Waukesha County Shoreland and Floodland Protection Ordinance provisions. Any removal of dead, diseased or dying trees located outside of the access/view corridor must be approved by the Waukesha County Department of Parks and Land Use. The restriction shall also state that no grading is authorized within 75' of Okauchee Lake, with the exception of the restoration activities needed to re-establish grades in the area of the house that currently encroaches upon the required shore setback.
3. A restriction must be placed on the Certified Survey Map stating that, as proposed, a shared driveway shall serve proposed Lots 1 and 2 with no other direct access to Road "O".

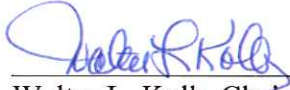
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town of Merton Clerk.

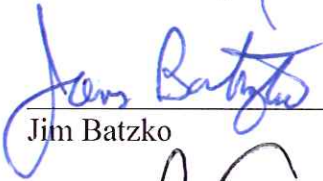
BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon passage, approval and publication.

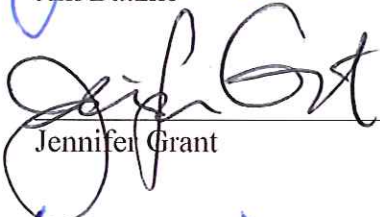
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION
ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF MERTON BY
CONDITIONALLY REZONING CERTAIN LANDS LOCATED IN PART OF
THE NW ¼ OF SECTION 31, T8N, R18E, TOWN OF MERTON, WAUKESHA
COUNTY, WISCONSIN, FROM THE R-1 RESIDENTIAL DISTRICT
TO THE R-3 RESIDENTIAL DISTRICT (SZ-1785)

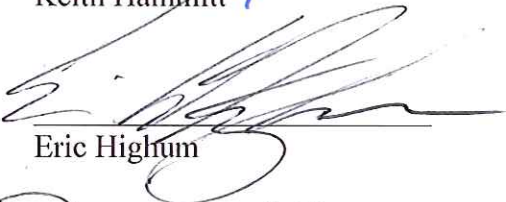
Presented by:
Land Use, Parks, and Environment Committee

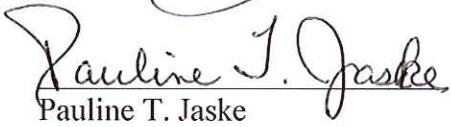

Walter L. Kolb, Chair


Jim Batzko


Jennifer Grant

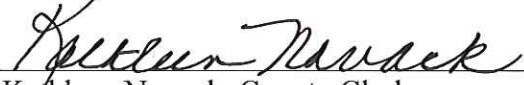

Keith Hammitt


Eric Highum



Pauline T. Jaske


Thomas J. Schellinger

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

Date: 8/26/14, 
Kathleen Novack, County Clerk

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

Approved: X
Vetoed: _____
Date: 8-27-14, 
Daniel P. Vrakas, County Executive

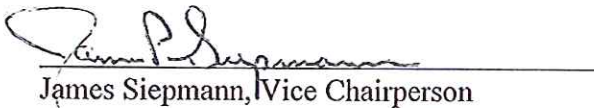
COMMISSION ACTION

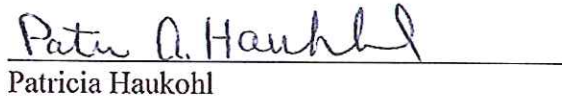
The Waukesha County Park and Planning Commission, after giving consideration to the subject matter of the Ordinance to amend the Waukesha County Shoreland and Floodland Protection Ordinance, hereby recommends approval of SZ-1785 (Oberhofer Family Revocable Living Trust/Tim O'Brien) in accordance with the attached "Staff Report and Recommendation".


PARK AND PLANNING COMMISSION

July 17, 2014

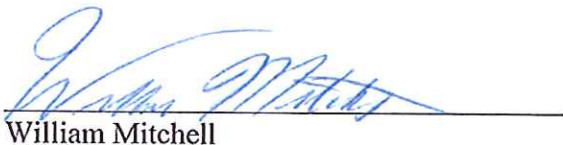

Robert Peregrine, Chairperson


James Siepmann, Vice Chairperson


Patricia Haukohl


Walter Kolb


Gary Goodchild


William Mitchell

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

DATE: July 17, 2014

FILE NO.: SZ-1785

TAX KEY NO.: MRTT 0410.994

OWNER: Oberhofer Family Revocable Living Trust
c/o Donna Oberhofer, Trustee
W339N5342 Road "O"
Nashotah, WI 53058

PETITIONER: Tim O'Brien
N27W24075 Paul Ct.
Pewaukee, WI 53072

LOCATION:

Lot 1, Certified Survey Map No. 1080, in part of the NW ¼ of Section 31, T8N, R18E, Town of Merton. More specifically, the property is located at W339 N5342 Road "O", containing approximately 1.8 acres.

PRESENT ZONING CLASSIFICATION:

R-1 Residential District and R-3 Residential District (County Shoreland).

PRESENT LAND USE:

Residential (single family residence, two outbuildings and a boathouse).

PROPOSED ZONING:

R-3 Residential District.

PROPOSED LAND USE:

Divide property to create two single family building sites.

PUBLIC HEARING DATE:

June 18, 2014.

PUBLIC REACTION:

One resident stated he hopes the general contractor would be responsible for any damage to the road and for the debris and mud on the road. He wanted to make sure the general contractor would be responsible for the road cleanup. He stated that ponding water within the depression on Road O is generally road runoff from upslope. He stated that most of the neighbors do not want this water pumped directly to the lake because it is dirty water. The Town Chairman responded stating that the Town Highway Department should be contacted if any tracking issues occur. Town Plan Commission members also noted that there is a French drain that ultimately assists in draining the ponded water.

TOWN PLAN COMMISSION AND TOWN BOARD ACTION:

On June 18, 2014, the Town Plan Commission recommended approval of the request. On June 23, 2014, the Town Board recommended approval of the rezoning request.

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

The Town and County Development Plans identify the property in the Low Density Residential category (20,000 to 1.4 acres per dwelling unit). The proposal to divide the 1.8 acre property into two parcels will conform to this density threshold. The plans also recommend preservation of steep slopes (slopes greater than 12%). With the recommended conditions of approval, it is felt that that steep slopes and trees on said slopes near Okauchee Lake will be protected in accordance with plan recommendations. In addition, the proposal to serve both proposed lots with one driveway will eliminate grading impacts to the area that contains steep kettle topography.

OTHER CONSIDERATIONS:

The subject 1.8 acre property sits at the north extent of Road "O" and has approximately 330' of frontage on Okauchee Lake. The property contains a house, two sheds near the road and a boathouse. All of the existing structures, except for the boathouse, are proposed to be razed. The existing house is legal non-conforming relative to shore setback, in that it is only approximately 57' from the lakeshore, whereas the ordinance requires a 75' setback. The petitioner would like to build a new residence on one of the parcels and the other parcel would be available as an additional single family lot. The petitioner has concurrently submitted a Certified Survey Map (CSM) that would facilitate division of the parcel if this rezoning were approved (see Exhibit "A").

The property is unusual in that it straddles a civil township boundary. The westerly part of the property is located within the Oconomowoc civil township boundary, while the east half is located within the Merton township boundary area. The full parcel is now located within the Town of Merton. The zoning of the property is also split at the same north/south civil township line, with lands to the west of the line being zoned R-3 Residential District and lands to the east of the line being zoned R-1 Residential District. The request is to rezone the east portion of the property to the R-3 District to match the balance of the property and the zoning of the surrounding lands to the south and west. Other surrounding lands to the north and east are zoned R-1 and EC Environmental Corridor.

The existing parcel is irregular in shape and has approximately 260' of frontage on Road "O" right-of-way. However, the westerly part of the road abutting the property slopes significantly and includes a depression area at the bottom of kettle. Consequently, the Town Highway Department has expressed a desire to see a shared driveway condition in the same general alignment as the existing driveway that serves the property. The petitioner has proposed a 20' access easement across a portion of proposed Lot 1 to accommodate such a shared driveway. The grades in that area are well above the kettle and are well suited for driveway access. The site contains a good amount of trees, however, the site is not designated as environmental corridor. The Shoreland and Floodland Protection Ordinance only allows for limited tree cutting within 35' of the lake to allow for an access/view corridor within up to 30% of the shore frontage area. Because there are steep slope conditions within 75' of the lake and because this area must remain free of structures

per ordinance and Wisconsin Department of Natural Resources (WDNR) requirements, the Planning and Zoning Division Staff feels that tree removal should be similarly restricted within 75' of the lake to ensure that slopes are adequately protected in accordance with the recommendations of the County Development Plan. It should be noted that the WDNR has also recommended shore buffer measures be employed on this property.

The Planning and Zoning Division Staff observed standing water in the kettle portion of the roadway near the lands to be rezoned after heavy rains in the preceding days. Neighbors and Town officials confirmed that water does stand in that area but that the Town has installed a French drain which draws the water down in a matter of days. Staff recommended at the public hearing that roof runoff from the westerly proposed lot, in particular, should be directed away from the kettle so as to not further contribute to the periodic standing water conditions. The surveyor has indicated that he will incorporate buried downspouts that will direct water towards the lake rather than the kettle. In addition, the Land Resources Division will review the CSM to ensure that that kettle is adequately protected and that appropriate building setbacks from the kettle are depicted. The County Storm Water Ordinance requires that a 50' setback be maintained from the high water mark of the kettle during a 100-year storm event. Because a 50' road setback is required in generally the same area, this kettle setback is likely to have little impact on the proposed building envelope. County CSM review conditions will further address these issues.

If this rezoning is approved, the house and sheds proposed to be razed will need to be removed prior to the CSM being signed, because the buildings either straddle proposed lot lines or would not comply with side yard offset requirements. The Shoreland and Floodland Protection Ordinance allows for retention of the boathouse without a house being present for a period of two years so long as a letter of credit or other financial assurance is filed to ensure that the building will be razed if a house has not been constructed within that timeframe.

STAFF RECOMMENDATION:

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

1. A Certified Survey Map to divide the lands must be recorded in the Waukesha County Register of Deeds Office by no later than July 17, 2016.
2. A restriction must be placed on the Certified Survey Map stating that no trees within 75 feet of Okauchee Lake may be removed from Lots 1 or 2, with the exception of an access/view corridor in accordance with the Waukesha County Shoreland and Floodland Protection Ordinance provisions. Any removal of dead, diseased or dying trees located outside of the access/view corridor must be approved by the Waukesha County Department of Parks and Land Use. The restriction shall also state that no grading is authorized within 75' of Okauchee Lake, with the exception of the restoration activities needed to re-establish grades in the area of the house that currently encroaches upon the required shore setback.
3. A restriction must be placed on the Certified Survey Map stating that, as proposed, a shared driveway shall serve proposed Lots 1 and 2 with no other direct access to Road "O".

As conditioned, the rezoning will allow for the creation of two building sites with building envelopes located in conforming locations relative to shore setback and will preserve the slopes and tree cover in the vicinity of Okauchee Lake. The rezoning will also help facilitate the removal of an existing home that is non-conforming relative to shore setback.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning and Zoning Manager

Attachments: Map, Exhibit "A"

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EXHIBIT "A"

CERTIFIED SURVEY MAP NO.

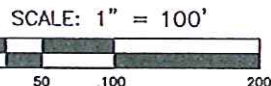
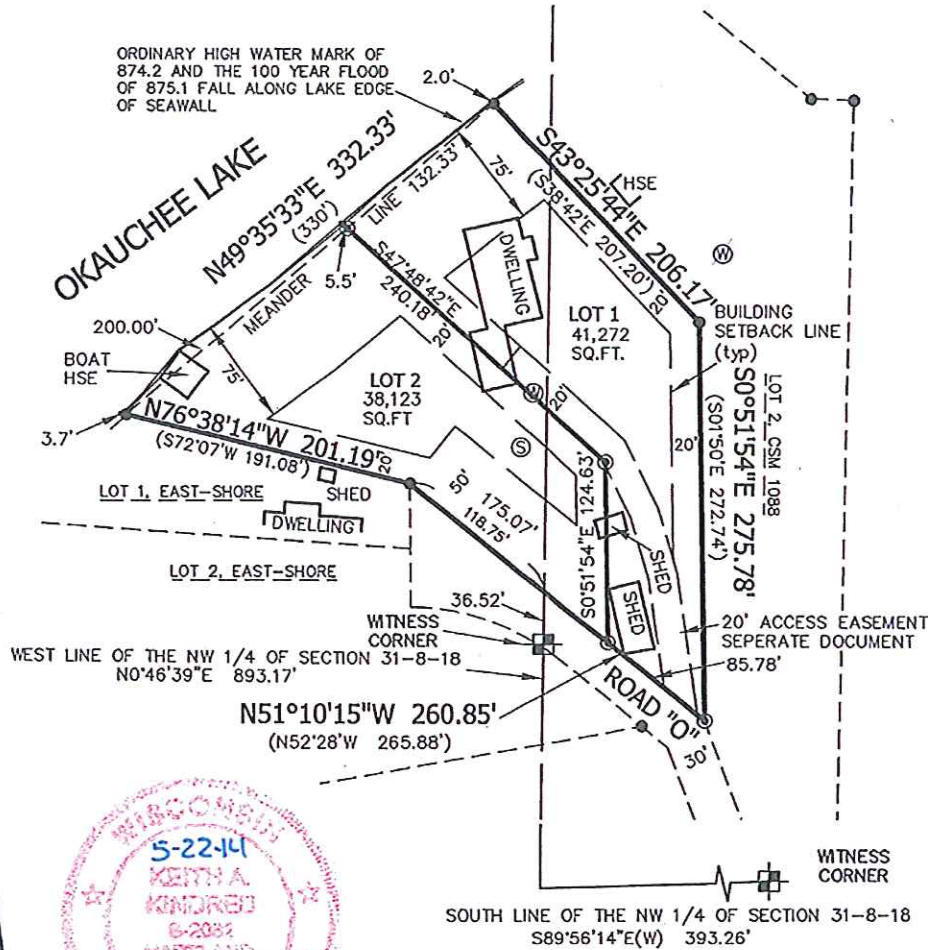
BEING ALL OF LOT 1, CSM #1080 AND LOCATED IN THE SE. 1/4 OF THE NE. 1/4 OF SECTION 36, T.08N., R.17E., AND THE SW. 1/4 OF THE NW. 1/4 OF SECTION 31, T.08N., R.18E., TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN.

SURVEYOR: KEITH A KINDRED, RLS 2082 YAGGY COLBY ASSOCIATES 501 MAPLE AVE DELAFIELD, WI 53018 (262) 646-6855x133 KEITHK@YAGGY.COM

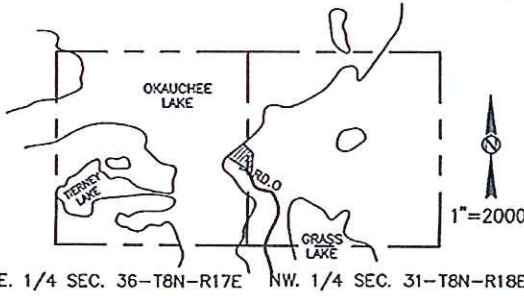
SURVEY FOR: TIM O'BRIEN N27W24075 PAUL CT PEWAUKEE, WI 53072 (262) 542-5750

- LEGEND: CONC. MON. W/ BRASS CAP FND., 1" IRON PIPE FOUND (UNLESS OTHERWISE STATED), 1" DIA. IRON PIPE SET, 18" LONG, WT. = 1.13 LBS./LIN. FT., WELL, CONC LID

EXISTING DWELLING AND SHEDS TO BE RAZED, EXISTING BOAT HOUSE TO REMAIN.

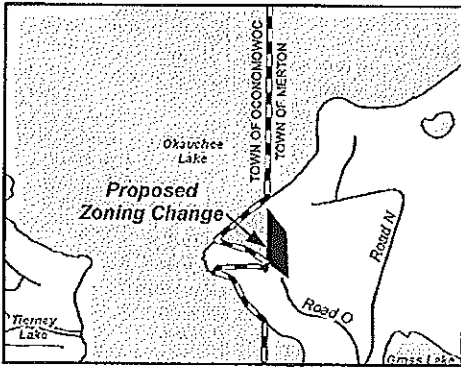
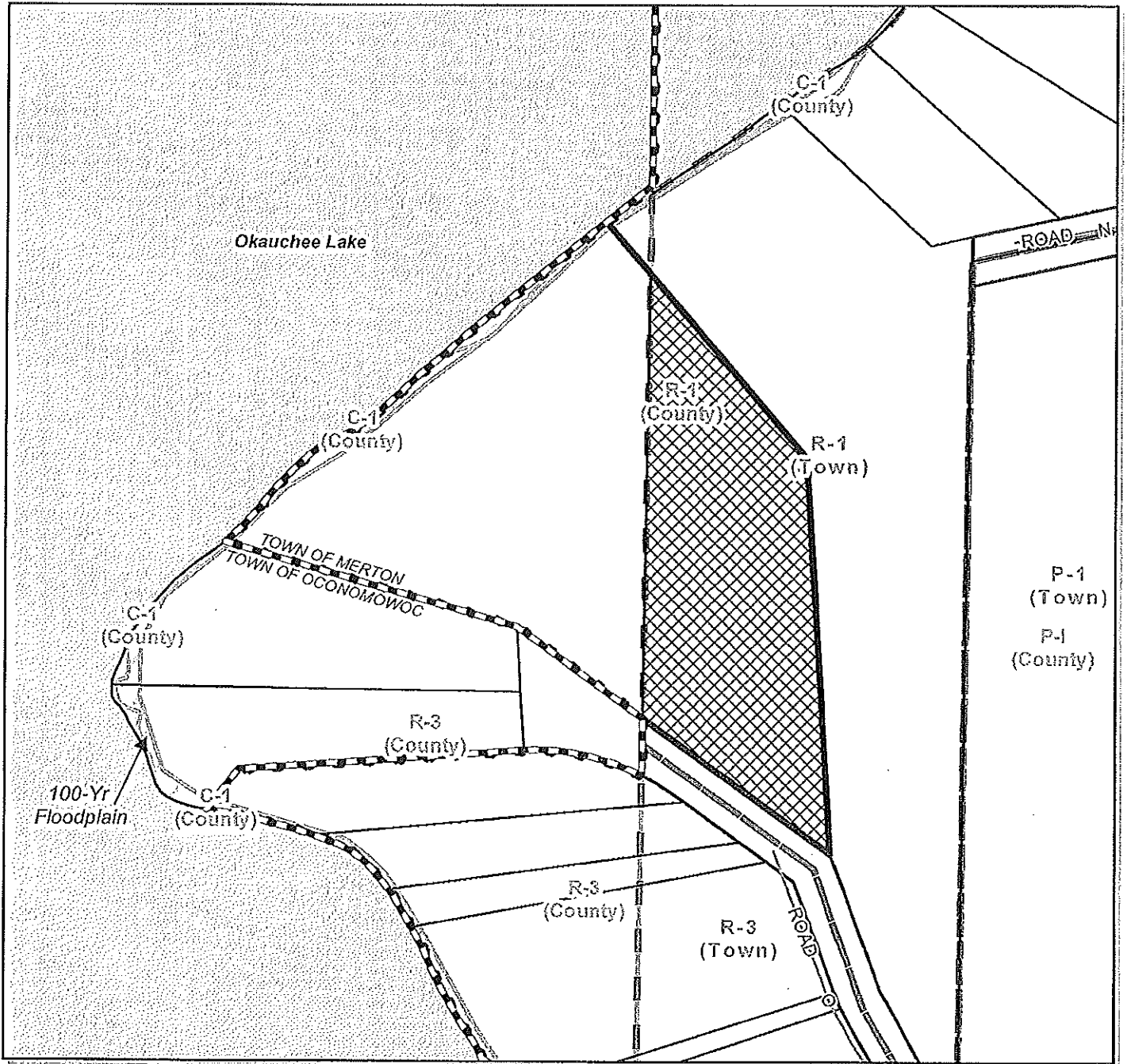



BEARINGS ARE REFERENCED TO THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE (NAD 1927) GRID NORTH ON THE WEST LINE OF THE NW 1/4 OF SECTION 31-8-18 AS N00°46'39"E.



ZONING AMENDMENT

PART OF THE NW 1/4 OF SECTION 31 TOWN OF MERTON



 **CONDITIONAL SHORELAND ZONING AMENDMENT FROM R-1 RESIDENTIAL DISTRICT TO R-3 RESIDENTIAL DISTRICT**


PETITIONER.....Oberhofer Family Revocable Living Trust

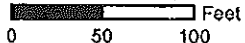
FILE.....SZ-1785

DATE.....07/17/14

AREA OF CHANGE.....0.77 ACRES

TAX KEY NUMBERS.....MRTT 0410.994



1 inch = 100 feet
 Feet
 0 50 100

Prepared by the Waukesha County Department of Parks and Land Use

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-08/26/14

(ORD) NUMBER-1690043

- | | |
|--------------------------|--------------------------|
| 1 R. KOLB.....AYE | 2 D. Zimmermann.....AYE |
| 3 R. MORRIS.....AYE | 4 J. BATZKO.....AYE |
| 5 J. BRANDTJEN.....AYE | 6 J. WALZ.....AYE |
| 7 J. GRANT.....AYE | 8 E. HIGHUM.....AYE |
| 9 J. HEINRICH.....AYE | 10 D. SWAN.....AYE |
| 11 C. HOWARD.....AYE | 12 P. WOLFF.....AYE |
| 13 P. DECKER.....AYE | 14 C. PETTIS.....AYE |
| 15 W. KOLB.....AYE | 16 M. CROWLEY.....AYE |
| 17 D. PAULSON.....AYE | 18 L. NELSON.....AYE |
| 19 K. CUMMINGS.....AYE | 20 T. SCHELLINGER....AYE |
| 21 W. ZABOROWSKI.....AYE | 22 P. JASKE.....AYE |
| 23 K. HAMMITT..... | 24 S. WHITTOW..... |
| 25 G. YERKE.....AYE | |

TOTAL AYES-23

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS X

TOTAL VOTES-23