

ENROLLED ORDINANCE 174-073

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION  
ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF WAUKESHA (RZ49)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was considered by the Waukesha Town Board on November 14, 2019; and

WHEREAS, the Waukesha Town Board recommended denial of the proposed Ordinance at their meeting on November 14, 2019; 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.

WHEREAS, to satisfy Condition #4, as set forth below, when final approval is received from FEMA in the near future, an ordinance will be brought to the Waukesha County Board of Supervisors to amend the text of the Waukesha County Shoreland and Floodland Protection Ordinance, Table 6(b)1.B.i., to incorporate a reference to the Letter of Map Revision for the floodplain boundary change.

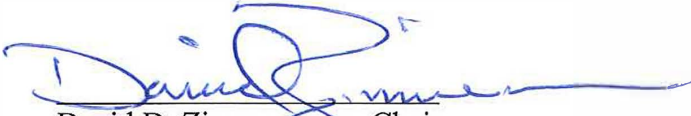
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the Waukesha County Shoreland and Floodland Protection Ordinance District Zoning Map for the Town of Waukesha, adopted by the Waukesha County Board of Supervisors on June 23, 1970, is hereby amended to conditionally amend the floodplain boundary of the C-1 Conservancy Overlay District of part of the property, certain lands located in the SE ¼ of Section 14, T6N, R19E, Town of Waukesha 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 RZ49, subject to the following conditions:

1. The petitioner must obtain a Conditional Letter of Map Revision (CLOMR) from FEMA and all conditions of the DNR shall be met prior to starting any construction activities related to the Pebble Brook road crossing.
2. The petitioner must submit written documentation that WDOT has approved the construction activities and floodplain impacts in the highway road right-of-way.
3. Prior to this rezone being effective, the petitioner must obtain a Letter of Map Revision (LOMR) from FEMA that states the as-built project complies with the CLOMR and there are no additional floodplain impacts.
4. Upon final approval by FEMA, Table 6(b)1.B.i. of the Waukesha County Shoreland and Floodland Protection Ordinance shall be amended to insert a text reference to the Letter of Map Revision.

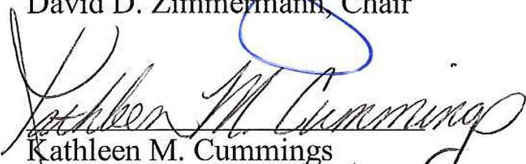
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the town clerk for the Town of Waukesha.

AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION  
ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF WAUKESHA (RZ49)

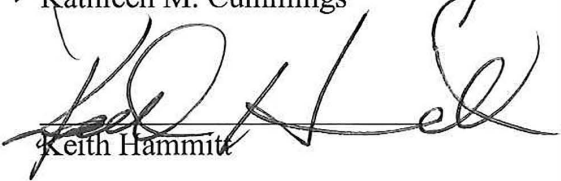
Presented by:  
Land Use, Parks, and Environment Committee



David D. Zimmermann, Chair



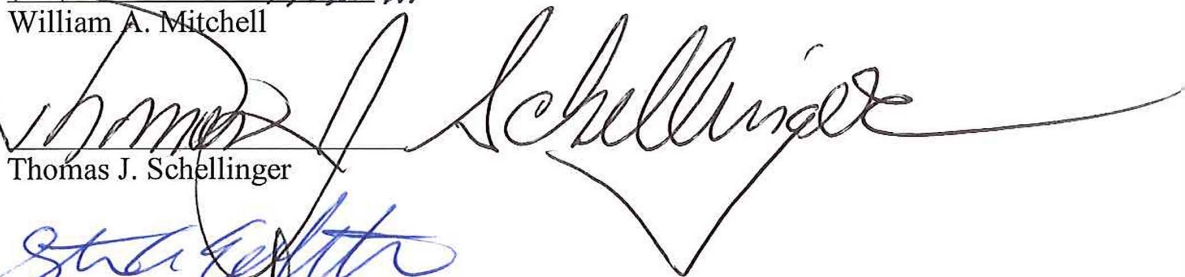
Kathleen M. Cummings



Keith Hammitt




William A. Mitchell



Thomas J. Schellinger




Steve Whittow

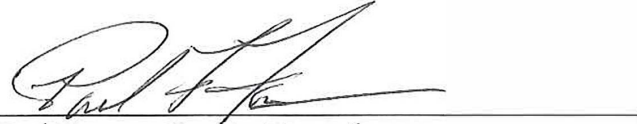


Chuck Wood

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

Date: 12/20<sup>18</sup>/19,   
Margaret Wartman, County Clerk

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

Approved: X  
Vetoed: \_\_\_\_\_  
Date: 12/18/2019,   
Paul Farrow, County Executive

## COMMISSION ACTION

The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the text and map of the Waukesha County Shoreland and Floodland Protection Ordinance hereby recommends approval of **(RZ49 Robert F. and Carol O. Smart Family Trust/Carol O. Smart Survivor Trust)** in accordance with the attached "Staff Report and Recommendation".

**PARK AND PLANNING COMMISSION**

**November 21, 2019**



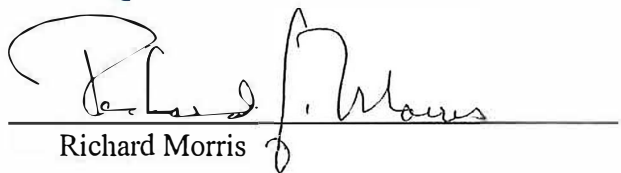
Robert Peregrine, Chairperson



William Mitchell, Vice Chairperson



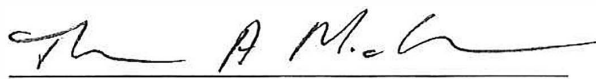
James Siepmann



Richard Morris



William Maslowski



Thomas Michalski

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

**DATE:** November 21, 2019

**FILE NO.:** RZ49

**PETITIONER:** Robert F. & Carol O. Smart Family Trust  
Carol O. Smart Survivor Trust  
W237 S4190 Big Bend Road  
Waukesha, WI 53189

**NATURE OF REQUEST:**

Amend the map and text of the Waukesha County Shoreland and Floodland Protection Ordinance in order to modify the regulated floodplain of the C-1 Conservancy Overlay Zoning District as a result of updated floodplain modeling and in order to accommodate an extension to Tenny Avenue located in the City of Waukesha. There is one parcel (WAKT1352.998.003) and WisDOT right-of-way that would experience an increased floodplain elevation as a result of the project.

**PUBLIC HEARING DATE:**

November 14, 2019.

**PUBLIC REACTION:**

There was discussion regarding the Tenny Avenue extension. Concern was raised related to traffic safety on Les Paul Parkway (USH 59/STH 164). A town citizen felt that the road connection was proposed so that the city and county could increase their tax base.

There was concern related to stormwater runoff from the development proposed in the city and whether that would impact town lands. There was also concern related to wetland and environmental impacts.

Some of the town plan commissioners and supervisors also expressed similar concerns and felt that the application was difficult to understand.

Another town citizen suggested that the proposal should be approved and that the town should not deny the project because of other town-city underlying issues.

*Staff Response*

The city's requirement for the petitioner to extend the road is a local decision. The proposal to modify the floodplain boundaries is the subject of this request. The city is requiring the road extension for safety purposes in order to provide a connection between two major road systems. The connection to USH 59/STH 164 and intersection details will require final approval by WDOT.

The city and/or state are required to manage stormwater depending on the extent of the project. The development project and road construction will need to comply with city and state requirements. The petitioner has not indicated that the project will result in wetland impacts in the town. The DNR and ACOE will need to permit any wetland impacts. The DNR notifies the county if any impacts extend into the town and their permits are subject to all local permits being obtained.

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

The plans recommend protection of lands from adverse flooding impacts and also call for a broad transportation network. If approved, as recommended, the project would be compatible with these recommendations in that there would be no uplands negatively affected by anticipated flood levels. In addition, proper modeling of proposed changes and approvals by FEMA would ensure that minor boundary changes are accurately reflected on regulatory floodplain maps.

**TOWN PLAN COMMISSION:**

At their November 14, 2019 meeting, the Town of Waukesha Plan Commission unanimously recommended approval of the proposed amendments to the Town Board.

**TOWN BOARD ACTION:**

At their November 14, 2019 meeting, the Town of Waukesha Board recommended against the proposed amendments with a 3-2 vote. The Town Board did not provide reasons for voting against the Plan Commission's recommendation.

**STAFF ANALYSIS**

The petitioner is proposing a residential development project in the City of Waukesha. As part of that project, the city is requiring that Tenny Avenue be extended so there is a connection from Sunset Drive to Les Paul Parkway (USH 59/STH 164). The road extension would provide an important safety route for emergency services and would provide increased circulation and access to the commercialized portion of Sunset Dr. The road will need to cross Pebble Brook. The crossing will have an impact on the floodplain, which extends into the Town of Waukesha.

The petitioner has demonstrated through floodplain modeling that any increase in floodplain heights is limited to the property owned by the petitioner and the highway right-of-way. The petitioner is working with the state for approvals. The highest increase in floodplain elevation is 0.53 ft. The floodplain impacts are located in areas otherwise designated as wetland. Therefore, the C-1 Conservancy Overlay District boundary does not change. The project requires a text and map amendment because FEMA requires that floodplain maps be designated as official maps in the Waukesha County Shoreland and Floodland Protection Ordinance.

In order to determine project impacts to the floodplain, the petitioner needed to correct the existing FEMA floodplain model. The existing model was developed in 1979 and does not account for a culvert and other obstructions constructed as part of past highway improvements. Several other conversions and corrections needed to be made. After the model was updated, the petitioner added additional cross-sections to make the analysis of the project as accurate as possible. As a result of these corrections, there are additional changes to the floodplain upstream of the petitioner's property. However, these changes result in a decrease in floodplain elevation. The mapping indicates a larger boundary in some areas because of more accurate topographic data. However, the updated modeling provides a less restrictive condition for upstream property owners as a result of the lower regulated floodplain elevation.

Because the updated floodplain modeling, not the project, results in modifications to the zoning jurisdictional boundaries and a reduction in the floodplain elevation upstream, the town and county will need to establish underlying zoning districts upon completion of the project and after the petitioner obtains a Letter of Map Revision from FEMA. It is important to have an as-built representation of the floodplain boundaries so that zoning and jurisdictional area can be adequately established.

The Wisconsin Department of Natural Resources (DNR) has conditionally approved the proposed floodplain modeling. FEMA is still reviewing additional information that has been submitted by the petitioner.

**STAFF RECOMMENDATION:**

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

1. The petitioner must obtain a Conditional Letter of Map Revision (CLOMR) from FEMA and all conditions of the DNR shall be met prior to starting any construction activities related to the Pebble Brook road crossing.
2. The petitioner must submit written documentation that WDOT has approved the construction activities and floodplain impacts in the highway road right-of-way.
3. Prior to this rezone being effective, the petitioner must obtain a Letter of Map Revision (LOMR) from FEMA that states the as-built project complies with the CLOMR and there are no additional floodplain impacts.
4. Upon final approval by FEMA, Table 6(b)1.B.i. of the Waukesha County Shoreland and Floodland Protection Ordinance shall be amended to insert a text reference to the Letter of Map Revision.

The proposed rezone amendment to modify the floodplain boundaries allows for a road extension in the city that provides a public benefit to town and city residents. The city is requiring the road extension to allow for emergency vehicles to quickly travel between Sunset Drive and Les Paul Parkway. The updated modeling also provides a more accurate depiction of floodplain conditions. Increases in the floodplain elevation are limited to the petitioner's property and the state's highway right-of-way. The area of the petitioner's property that is impacted by the project is already regulated as wetland and prohibited from development. The property does not have any access to the highway and is restricted from development. Therefore, there is no anticipated loss of property value relative to the petitioner's property, which is the only privately owned property that would experience a higher floodplain elevation. The proposed floodplain impacts do not have a negative impact on other adjacent private property, resources, or the public interest. The proposal complies with the purpose and intent of the Waukesha County Shoreland and Floodland Protection Ordinance.

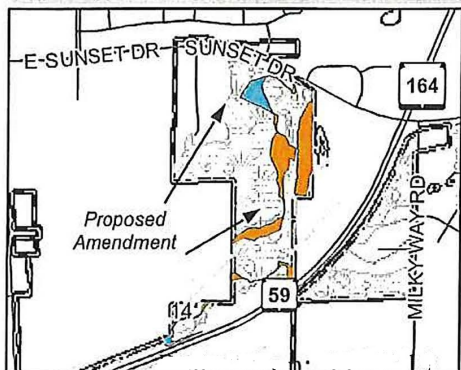
Respectfully submitted,

*Amy Barrows*

Amy Barrows  
Senior Planner






Attachment: Zoning Map Exhibit





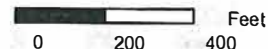
### Proposed Pebble Brook Floodplain

RZ49

-  Proposed Floodplain Boundary (1.94 acres)
-  Floodplain Boundary to be Removed (7.28 acres)
-  Environmental Corridor Overlay District to Remain
-  Wetland Overlay District to Remain
-  Existing 100-yr. Floodplain



1 inch = 400 feet



**Ordinance 174-O-077**



Amend The Waukesha County Shoreland And Floodland Protection Ordinance District Zoning Map Of The Town Of Waukesha (RZ40)

**VOTE RESULTS: Passed By Majority Vote**

**AYE: 23 NAY: 0 ABSENT: 2**

D1 - Foti	Yes
D2 - Zimmermann	Motion
D3 - Morris	Yes
D4 - Batzko	ABSENT
D5 - Dondlinger	Yes
D6 - Walz	ABSENT
D7 - Grant	Yes
D8 - Michalski	Yes
D9 - Heinrich	Yes
D10 - Swan	Yes
D11 - Howard	Yes
D12 - Wolff	Yes
D13 - Decker	Yes

D14 - Wood	Yes
D15 - Mitchell	Yes
D16 - Crowley	Yes
D17 - Paulson	Yes
D18 - Nelson	Yes
D19 - Cummings	Second
D20 - Schellinger	Yes
D21 - Gaughan	Yes
D22 - Wysocki	Yes
D23 - Hammitt	Yes
D24 - Whittow	Yes
D25 - Johnson	Yes