

ENROLLED ORDINANCE 167-76

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. 164-77) FOR CERTAIN LANDS LOCATED IN PART OF THE SE ¼ AND SW ¼ OF SECTION 19, T8N, R18E, TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN (SZT-1692A)

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 January 14, 2013 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 Merton, Waukesha County, Wisconsin, adopted on June 23, 1970, and the Town of Merton Zoning Ordinance adopted on October 23, 2007 are amended to revise the conditions of a previous conditional rezoning (Enrolled Ordinance No. 164-77) 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 SZT-1692A, subject to the following 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.

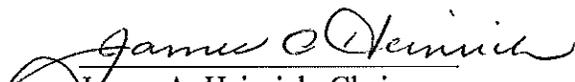
BE IT FURTHER ORDAINED that the Waukesha County Clerk shall file a certified copy of this Ordinance with the Town Clerk of Merton.

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

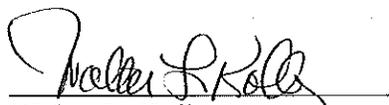
BE IT FURTHER ORDAINED that all ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

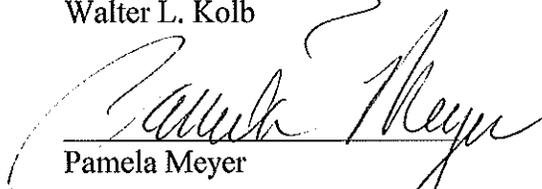
AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE DISTRICT ZONING MAP OF THE TOWN OF MERTON AND THE TOWN OF MERTON ZONING ORDINANCE BY REVISING THE CONDITIONS OF A PREVIOUS CONDITIONAL REZONING (ENROLLED ORDINANCE NO. 164-77) FOR CERTAIN LANDS LOCATED IN PART OF THE SE ¼ AND SW ¼ OF SECTION 19, T8N, R18E, TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN (SZT-1692A)

Presented by:
Land Use, Parks, and Environment Committee


James A. Heinrich, Chair

{Absent}
Jim Batzko


Walter L. Kolb

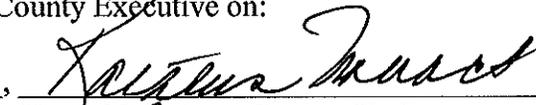

Pamela Meyer

{Absent}
Fritz Ruf

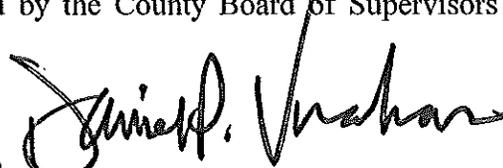

Thomas J. Schellinger


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: 2/26/2013 
Kathy Niskolaus, County Clerk

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

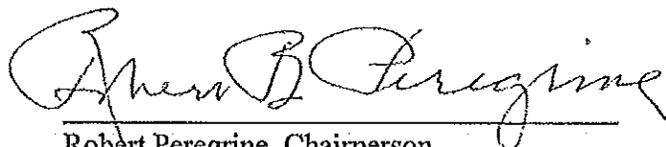
Approved: X
Vetoed: _____
Date: 3-11-13 
Daniel P. Vrakas, County Executive

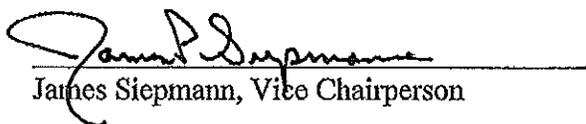
COMMISSION ACTION

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 (SZT - 1692A Elogan, LLC/Ridder) in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

January 17, 2013


Robert Peregrine, Chairperson


James Siepmann, Vice Chairperson


William Mitchell


Gary Goodchild


Walter Kolb


Pat Haukohl


Fritz Ruf

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

DATE: January 17, 2013

FILE NO: SZT-1692A

OWNERS: Elogan LLC
c/o Helmut Keidl
6231 N. Hwy 83
Hartland, WI 53029

PETITIONER: Ludwig W. Ridder
P.O. Box 1060
Oconomowoc, WI 53066

TAX KEY NO: MRTT 0364.957.002

LOCATION:

Lot 1, Certified Survey Map No. 10,921, Volume 106, Page 174, located in part of the SE ¼ and the SW ¼ of Section 19, T8N, R18E, Town of Merton, containing 126,640 sq. ft. (2.9 acres).

PRESENT ZONING:

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

PRESENT LAND USE:

The building is currently vacant.

PROPOSED ZONING:

Amend the conditional 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 to allow the property to be used for warehousing of dry goods and to allow an area of the building to be used as a residential living unit.

PUBLIC HEARING DATE: December 19, 2012.

PUBLIC REACTION:

Two neighbors spoke in favor of the proposed rezone request and the proposed storage use and indicated that the property has been cleaned up under the new ownership.

TOWN PLAN COMMISSION AND TOWN BOARD ACTION:

At their meeting on December 19, 2012, the Town of Merton Plan Commission recommended approval of the proposed zoning amendment to the Town of Merton Board. At their meeting on January 14, 2013, the Town of Merton Board approved this request. Minutes from the meeting are attached as Exhibit "A."

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:

Prior to 2000, the property was the subject of a number of Town Conditional Use Permits relative to a frozen and fresh food storage operation.

In 2000, Mr. Dee's received a Conditional Use approval from the County which granted Legal non-conforming Conditional Use status to the operation and granted approval for the construction of an addition to the existing cold storage facility which was to be used for a freezer warehouse and distribution center. The Conditional Use approval was subject to several conditions. There is no evidence in the file that the conditions were ever satisfied. The addition was not constructed and a Conditional Use Permit was not issued. It should be noted that at the time of the legal non-conforming conditional use request, the property was zoned B-2 Local Business District, which did not allow the cold storage use that was existing.

In May 2009, the County was notified by a perspective buyer that the use of the property as a cold storage facility had been discontinued for over 12 months. Since cold storage, warehouses and distributors are not permitted uses in the B-2 zoning district, all rights to the legal non-conforming use had been lost pursuant to Section 3(o)(2)(B)(iii) of the Waukesha County Shoreland and Floodland Protection Ordinance. This Section 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.

Therefore, in October 2009, a request to rezone the property to the B-3 General Business, zoning district to allow the cold storage, food packaging and food processing operation was submitted. The rezoning was approved 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. 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, a complaint was received from the Town of Merton that a dormer was being constructed on the building on the subject property and that lumber and construction materials were all over the property. Subsequently, the Town issued a Stop Work Order on the property. On October 9, 2012, our office sent a

letter to the owner indicating that the property is in violation of the Waukesha County Shoreland and Floodland Protection Ordinance for failure to obtain a Zoning Permit prior to construction activities and notifying the owner that in addition to the Zoning Permit, a Site Plan/Plan of Operation Permit would be required. In addition, the owner was notified that due to the specific nature of the previous zoning change, a request to amend the zoning would also be required for any proposed use other than those specifically listed in the 2009 conditional rezoning. On October 18, 2012, the Site Plan/Plan of Operation application was received, on November 19, 2012, the rezoning application was received and on November 29, 2012, the Zoning Permit application was received. The resolution of the commencement of construction without the necessary permits is pending the outcome of the request to amend the conditional zoning on the property.

Site conditions and proposal:

The property contains a 27,020 square foot cold storage facility, five loading docks, dry storage and offices. 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". There are single-family residential structures on all sides of the property, with a mobile home park to the east and a tavern to the west. The property is subject to shoreland regulations because it lies within 1,000 ft. of Okauchee Lake.

As noted above, the petitioner is requesting to amend the conditional B-3 zoning on the property to allow the property to be used for warehousing of dry goods that will include paper products, machinery, molds for parts, etc. No food products will be stored on site. There will be heating in some areas of the building. There will be no warehousing of combustible liquids or storage of motor vehicles with flammable motor fuels. There will be no automotive repairs being conducted in the building as a business. The facility will have a minimum number of employees for persons loading or unloading trucks. In addition, the petitioner is proposing to convert the area on the north end of the building into a residence for an on-site employee or manager. The petitioner has indicated that this area of the building was at one time a residence but had been converted to office space. The petitioner has also indicated that the live-in employee is necessary to provide security for the building.

It should be noted that under the Waukesha County Shoreland and Floodland Protection Ordinance, a building, or portion thereof, or a building designed with self-contained units, which is leased by the owner for storage, and lockers and cold storage plants are permitted uses in the B-3 Zoning District. It should also be noted that the B-3 district specifies that residential use shall be permitted only in conjunction with or accessory to an otherwise permitted use.

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 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 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.

Respectfully submitted,



Peggy Tilley
Senior Land Use Specialist

cc: Exhibit "A"
Map

N:\PRKANDLU\Planning and Zoning\Rezoning\Staff Reports\1692A Elogan Ridder mrt.doc

Morris said no, we're still working on the overall structure. All around us they're doing the same thing, thinking sometimes we should be part of it and then I think about the response times. Something we need to look at down the line. Remember the study showing 7 engines and the goal is 5. Cull said he's not going to keep doing this if there is not trust, is the Town is looking at someone else. We need communication. Morris said I don't think that is the right word at all. I liked to put it out there i.e.: Number of trucks reorganization. Lichte said he would like to see one fiscal agent, same bookkeeper etc. would be helpful. Sprung said do you ask the same questions of the departments. Fleming spoke about the spreadsheet created. Fleming said Merton did it but not the same results.

Oman said the contract asks for the number of calls, fire and ems. Seidl said he would get it.

Seidl reported on call times with other departments. Agree there is room for us to look at.

It has a lot to do with the equipment Oman said if you threw Hartland in the schedule, you would have 10 engines, how does the Town replace all this equipment and pay for personnel that we know we will have to pay.

Morris said they would continue to look at.

Amended Stone Bank Fire Budget - A motion was made to approve 89,779.89 for fire and 36,994.62 in the capital fund by Lichte, second by Herrick. Motion carried

New Business:

Approve Appointment of Jim Schneider to Board of Adjustment -

Morris stated he appointed Jim Schneider. A motion was made to confirm appointment by Lichte, second by Herrick. Motion carried. Morris stated Bill Timmer was on the BOA and had passed away.



Resolution to Approve Re-zoning Request to Amend Conditions of the existing conditional B-3 zoning, to allow property to be used for warehousing and residential living unit for warehouse manager, CTHK (formerly Stone Bank Cold Storage) as Recommended by the Plan Commission -

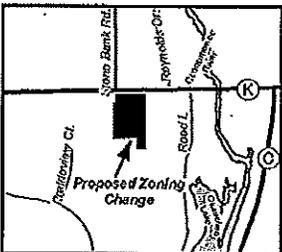
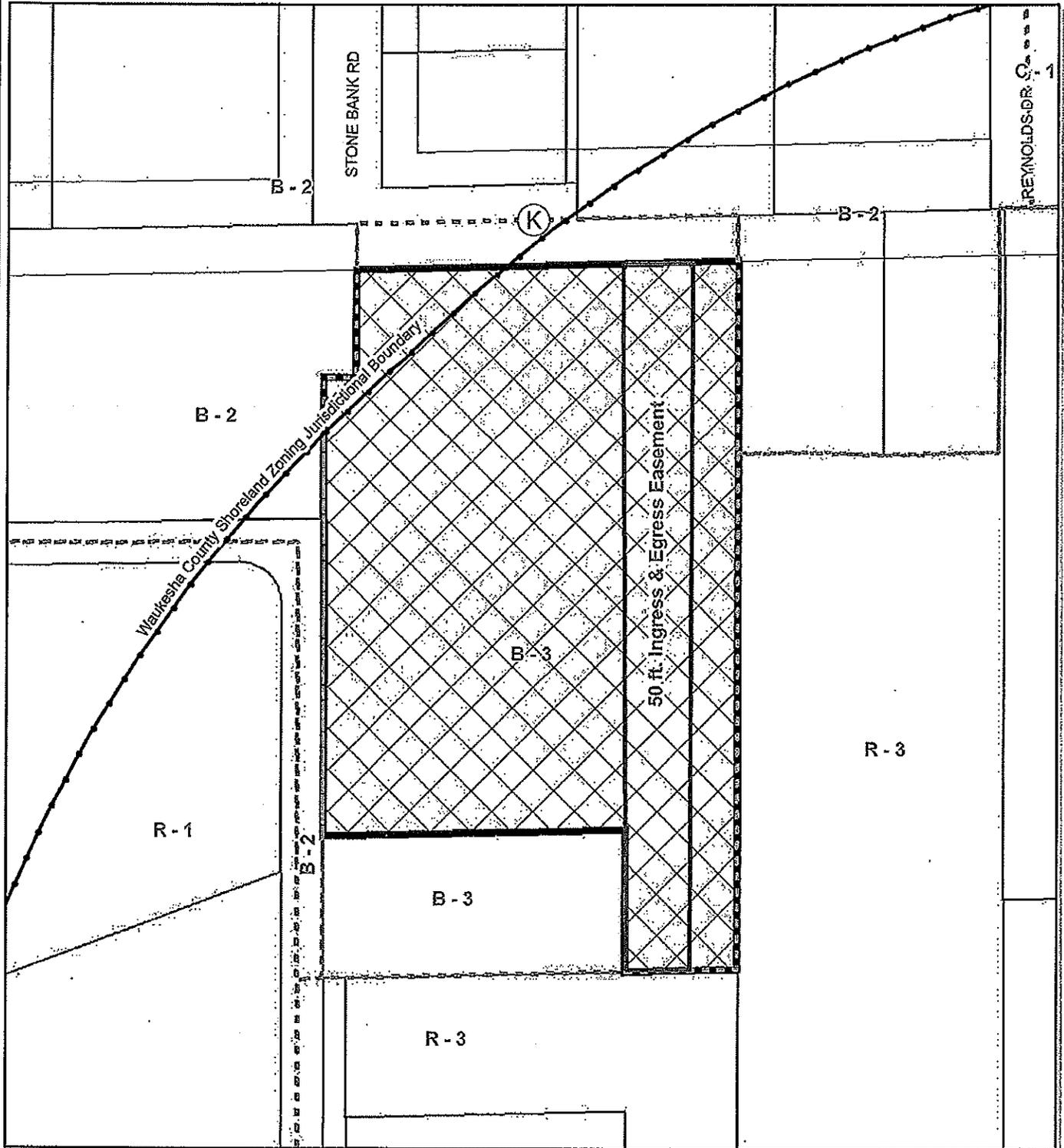
Chapman explained the town ordinance already has B-3 but the County has it B-2 so any change has to be conditionally approved. Chapman said the use will be dry storage for prototypes, parts with a manager living on-site.

A motion was made to adopt the resolution for a B-3 conditional zoning as recommended by the Plan Commission by Lichte, second by Fleming. Motion carried.

Approve Winterfest, January 19th, 2013, Nomads Snowmobile Club, Monches Park - Fleming indicated this is a fund raiser by the snow mobile club with funds given to the food pantry and Monches Rec. Club. A motion was made to approve by Fleming, second by Herrick. Motion carried.

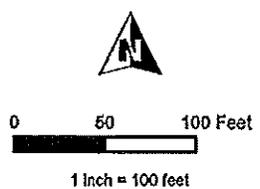
ZONING MAP AMENDMENT

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



 AMENDED CONDITIONS OF REZONE SZT-1692. PROPERTY TO REMAIN UNDER B-3 GENERAL BUSINESS ZONING DISTRICT (2.91 AC)

FILE.....SZT-1692A
 DATE.....1/17/13
 AREA OF CHANGE.....2.91 ACRES
 TAX KEY NUMBER.....MRTT 0364.957.002



Prepared by the Waukesha County Department of Parks and Land Use

167-0-076

WHEREAS, the following described property is zoned B-2 under the Waukesha County Shoreland and Floodland Protection Ordinance; and

WHEREAS, based upon a petition by Stone Bank Cold Storage, LLC, the county by ordinance granted a B-3 use by way of conditional zoning, said property to be used pursuant to the ordinance for cold storage of food products; and

WHEREAS, a petition has been file by ELOGAN, LLC to allow a substitute conditional B-3 use of dry storage including paper products, machinery, molds for parts, excess inventory, etc., none of which will include food products, together with the use of a residence unit for an on-site manager; and

WHEREAS, a joint public hearing was held by the Town of Merton Plan Commission, Town of Merton Town Board, and a staff representative of the Waukesha County Department of Parks and Land Use/Planning and Zoning Division on December 19, 2012, at which time all interested persons were heard concerning the petition; and

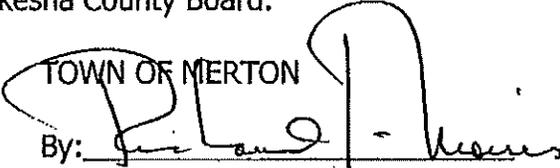
WHEREAS, the proposed dry storage is less intensive than the formerly granted conditional B-3 use of said property as a facility for the cold storage of food.

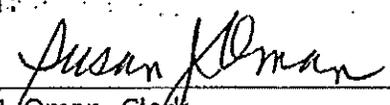
NOW THEREFORE, BE IT HEREBY RESOLVED that for the reasons set forth in the recital paragraphs of this resolution, the Town Board of the Town of Merton does hereby recommend that Waukesha County amend the current conditional B-3 enrolled ordinance to approve the Conditional B-3 General Business use of dry storage of paper products, machinery, molds for parts, excess inventory, etc., on said property, together with an attached residence for the on-site manager.

BE IT FURTHER RESOLVED that this recommendation is for conditional rezoning which shall not take effect unless and until the site plan and plan of operation have been approved by the Town Plan Commission and the Waukesha County Department of Parks and Land Use.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Waukesha County Department of Parks and Land Use for presentation to appropriate county committees, and alternately the Waukesha County Board.

DATED: January 14, 2013

TOWN OF MERTON
By: 
Richard Morris, Chairman

ATTEST:

Susan J. Oman, Clerk

RECEIVED
JAN 17 2013

DEPT OF PARKS & LAND USE

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-02/26/13

(ORD) NUMBER-1670076

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

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.....
 16 M. CROWLEY.....AYE
 18 L. NELSON.....AYE
 20 T. SCHELLINGER...AYE
 22 P. JASKE.....AYE
 24 D. DRAEGER.....AYE

TOTAL AYES-21

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS X

TOTAL VOTES-21