

ENROLLED ORDINANCE 176-6

ORDER TO ATTACH TERRITORY TO THE PHANTOM
LAKES MANAGEMENT DISTRICT

WHEREAS, on January 13, 2021, a petition was filed with Waukesha County requesting the attachment of territory to the Phantom Lakes Management District and was accompanied by a map and a description indicating the area and boundaries of the proposed territory to be attached; and

WHEREAS, Waukesha County held a public hearing on February 9, 2021 pursuant to §33.26 Wis. Stats. and one comment was received in opposition of the attachment, which is recorded in a report submitted to the County Board by the Land Use, Parks and Environment Committee.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA makes the following order:

Based on the above noted report on this matter from the Waukesha County Land Use, Parks and Environment Committee, this Board finds and concludes:

1. That the petition filed on January 13, 2021 was signed by the Phantom Lakes Management District Board Chairman, Joe Graczyk.
2. That attachment of the territory to the district is necessary.
3. That the public health, comfort, convenience, necessity or public welfare will be promoted by the attachment of this territory to the district.
4. That the territory to be attached to the district will be benefited by being in the district.

Based on the above findings and conclusions,

IT IS HEREBY ORDERED THAT:

1. Pursuant to §33.33 Wis. Stats., the territory shall be attached to the Phantom Lake Management District. The territory is described as:

Lot 1 of Certified Survey Map 11953 in the Village of Mukwonago, Waukesha County, Wisconsin.

The territory to be attached to the district is as illustrated in Exhibit "A".

Dated this ___ day of _____, 2021.

Paul L. Decker
Chairman, Waukesha County Board of
Supervisors

Meg Wartman
Waukesha County Clerk

ORDER TO ATTACH TERRITORY TO THE PHANTOM
LAKES MANAGEMENT DISTRICT

Presented by:
Land Use, Parks, and Environment Committee

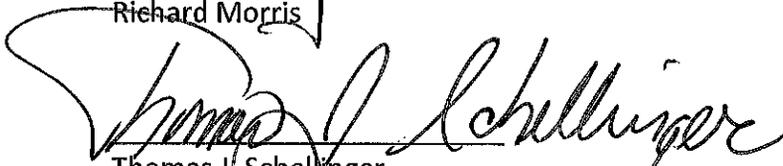

William A. Mitchell, Chair


Keith Hammitt


Thomas A. Michalski


Chris Mommaerts


Richard Morris


Thomas J. Schellinger

Absent

Steve Whittow

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

Date: 4/30/2021, 
Margaret Wartman, County Clerk

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

Approved: X

Vetoed: _____

Date: 5/3/2021, 
Paul Farrow, County Executive

WAUKESHA COUNTY LAND USE, PARKS AND ENVIRONMENT COMMITTEE

REPORT, FINDINGS AND RECOMMENDATIONS

**PROPOSED TERRITORY ATTACHMENT TO THE PHANTOM LAKES
MANAGEMENT DISTRICT**

DATE: February 24, 2021

LOCATION OF PROPERTY:

Lot 1 of Certified Survey Map 11953 in the Village of Mukwonago, Waukesha County, Wisconsin recorded with the Waukesha County Register of Deeds on July 29, 2020 as document # 443148 (Tax Key No. MUKV2009965003).

BACKGROUND INFORMATION:

On January 13, 2021, a petition was filed with Waukesha County for the attachment of territory to the Phantom Lakes Management District (“District”) pursuant to Chapter 33, Wisconsin Statutes.

On January 20, 2021, County Board Chairman Paul Decker appointed an ad-hoc committee (the “Phantom Lake Management District Committee”) to conduct a public hearing on behalf of the County Board. Members of the ad-hoc committee included the following:

Bill Mitchell, Chairman of Parks, Land Use and Environment committee
Perry Lindquist, Land Resources Manager
Demetra Christopoulos , Principal Assistant Corporation Counsel
Alan Barrows, Senior Conservation Specialist
Darlene Johnson, County Board Supervisor District 25

To fulfill requirements detailed under s. 33.26 Wis. Stats., with regard to the attachment of territory to an existing public inland lake protection and rehabilitation district (“Lake Management District”), the Phantom Lake Management District Committee held a “virtual” public hearing on February 9, 2021 via Microsoft Teams. The landowner of the proposed territory attachment was notified of the hearing in a letter sent by U.S. Mail and by telephone. A legal notice announcing the public hearing date and information on how to join the hearing appeared in the Waukesha Freeman on February 2, 2021. The Wisconsin Department of Natural Resources was also notified of the hearing date through an email dated February 8, 2021. At the hearing, all interested persons were provided the opportunity to ask questions and offer objections, criticisms or suggestions as to the necessity of the proposed territory attachment as outlined and to the question of whether the district (or lake) would be benefited by the inclusion of their property within the district.

PUBLIC HEARING DATE: February 9, 2021

PUBLIC REACTION:

Prior to the public hearing, the opportunity to file objections to the attachment of territory to the Phantom Lakes Management District was presented. Written objections were to be sent to Alan Barrows, Sr. Conservation Specialist with the Waukesha County Department of Parks and Land Use – Land Resources Division. The process of how to file objections was made known through the public hearing notice, in the letter sent to the landowner of the proposed territory attachment and on the Waukesha County website. The landowner filed an objection to the proposed territory by email to Alan Barrows. The written objection was read aloud at the public hearing for the record.

A total of fifteen people attended the public hearing on February 9, 2021 via Microsoft Teams. Four people were Waukesha County staff. Two people were Waukesha County Board Supervisors. The remaining ten people had an interest in the proposed attachment of territory to the existing Lake District boundary.

Prior to the public hearing, Alan Barrows provided an overview of Phantom Lakes, the Phantom Lakes Management District boundary, the petition filed with Waukesha County and the process for attaching territory to the existing Lake District. Attendees raised questions and provided comments about the proposed territory attachment. Additional details about the public hearing are included in the attached public hearing meeting minutes.

CONSIDERATIONS:

To fulfill requirements detailed under s. 33.33(2) Wis. Stats., the County Board shall, within 6 months after the date of the public hearing, issue its order relative to the attachment of territory to the district. In making its order, the Board shall find, after consideration of the Phantom Lake District Committee report and any other evidence submitted to the Board, the following:

1. That the petition is signed by the Phantom Lake Management District Board Chairman, Joe Graczyk.
2. That the proposed territory attachment to the district is necessary.
3. That the public health, comfort, convenience, necessity or public welfare will be promoted by attachment of this territory to the district.
4. That the property to be included in the district will be benefited by being in the district.

STAFF RECOMMENDATION:

The criteria stated above were examined by the staff of the Waukesha County Department of Parks and Land Use-Land Resources Division. To determine the necessity or benefits of attaching territory to the lake management district, it is important to understand the intent of the public inland lake protection and rehabilitation district law. Increasing use of lakes and changing land uses can contribute to the decline of water quality. Resolving lake problems can be complicated, time consuming and require a financial commitment. Typically, voluntary lake associations lack sufficient legal and financial resources to undertake many lake management activities. Creation of the law (Chapter 33 Wisconsin Statutes) enables concerned citizens to organize a special purpose district to protect or improve a lake. Therefore, it is the opinion of the staff that:

1. The petition that was signed by the Phantom Lakes Management District Board Chairman initiates the attachment proceedings and satisfies the requirement for a "motion" by the Lake District commissioners under s. 33.33(2) Wis. Stats.
2. The proposed territory attachment to the district is necessary because Lot 1 of Certified Survey Map # 11953 (4.375 acres where The Pointe Apartments are located) has deeded access over the East Troy Electric Railroad tracks to Lot 2 of Certified Survey Map # 11953 (.563 acres along the lake) through a License Agreement for Private Crossing recorded with the Register of Deeds as Document # 4496803 allowing tenants of The Pointe Apartments to access Lower Phantom Lake for recreational purposes;
3. The public health, comfort, convenience, necessity or public welfare will be promoted by the attachment of this territory to the district; and
4. The property to be attached to the district as described in the Order drafted by the Waukesha County Department of Parks and Land Use, will be benefited by being in the district.

It should be noted that Lot 2 of Certified Survey Map # 11953 falls within the current Phantom Lakes Management District official boundary. The Phantom Lakes Management District has historically included riparian parcels (those that touch the lake shore) and parcels with deeded access to the lake within their District boundary.

Therefore, upon meeting the above noted statutory criteria, the staff recommend the County Board declare the requested territory be attached to the Phantom Lakes Management District.

Respectfully submitted,



Alan Barrows
Sr. Conservation Specialist
Land Resources Division
Waukesha County Dept. of Parks and Land Use

Enclosure: Phantom Lake Management District Public Hearing Minutes

Meeting Minutes

Public Informational Meeting & Hearing on Proposed Phantom Lake Management District

Tuesday, February 9, 2021 – Microsoft Teams

Staff/Committee Attendance:

Supervisor Bill Mitchell, Waukesha County Board Supervisor and Land Use, Parks and Environment (LUPE) Committee Chairman

Demetra Christopoulos, Waukesha County Corporation Counsel

Alan Barrows, Waukesha County Department of Parks and Land Use

Kendra Oldfield-Roberson, Waukesha County Department of Parks and Land Use

Darlene Johnson, County Board Supervisor, District 25

Absent

Perry Lindquist, Waukesha County Department of Parks and Land Use

Public Attendees: 9

Bill Mitchell called the meeting to order at 7:00pm and reviewed the agenda.

Presentation: Phantom Lakes Management District – Alan Barrows

Phantom Lakes located in lower, central area of county, in the Village and Town of Mukwonago. There are 483 acres of total lake. The Lake District was created on July 19, 1977; the boundary was refined in 1999 and additional territory was attached in 2001. The proposed additional parcel is located in the Village of Mukwonago. Current enabling legislation for the Attachment of Territory to a District is allowed by Chapter 33.33(2) of the Wisconsin Statutes; this provides for the attachment of contiguous territory to a District boundary by petition of the owner or by motion of the commissioners. Property can be attached to a district by:

1. A petition to the district by the owner of a contiguous parcel. The petition must be accepted by a majority vote of the district commissioners.
2. If the commissioners by motion initiate attachment proceedings, they shall notify the owners of the territory contemplated for attachment and the County Board. The County Board shall schedule a hearing on the motion.

The process for attachment of territory by motion includes:

1. Upon filing of the petition with Waukesha County, the Phantom Lake District Ad Hoc Committee schedules a public hearing.
2. The Phantom Lake District Ad Hoc Committee will report to the County Board within 3 months after the date of the hearing.
3. Within 6 months after the date of the hearing, the County Board shall declare the territory to be either attached or not attached.

4. Appeals to the County Board's decision are made through a petition to the circuit court, not more than 30 days after the Board's decision.

To attach territory the District by motion, the County Board must make several findings:

1. The petition is signed by the required District representative.
2. That the proposed territory attachment to the district is necessary.
3. The public health, comfort, convenience, necessity or public welfare will be promoted by the attachment of this territory to the district.
4. That the property to be included in the district will be benefited by being in the district.

Notice, Filing and Recording Requirements as indicated by Chapter 33.265 Wisconsin Statutes indicates If a district is created or its boundaries altered, the board of commissioners shall record the authorizing document, including a legal description of the boundary, with the register of deeds in each county where the district is situated, and file the document and legal description with the department of natural resources and the department of revenue. Exhibit A and an Aerial Photo of the proposed attachment are included and posted on the website.

Alan Barrows asked if there were any questions.

Joe Tearney stated he is representation for the owner and wanted to indicate from the beginning that they are opposed to the motion. He would circle back to this position once the Public Hearing was opened.

It was asked if the property owner (of the proposed attached parcel), currently owns any other property in the district? It is unclear, the notice only indicates one, might be a sliver that is included in boundary.

Supervisor Bill Mitchell opened the Public Hearing

Public Comments:

Jake Jagmin: 415 Lake St

Jake is in favor of adding the proposed attachment. Jake stated adding this parcel is consistent with other properties in the district that have deeded lake access. Jake stated that on June 2, 2020, the police Chief advised that the proposed parcel for attachment does have lake access through trolley tracks. Jake stated that residents do have lake access as it is advertised on their website; the website also points out the lake views, access, and proximity – which can be used for launching a canoe or kayak.

Alan Barrows read the public notice, which was published in the Waukesha Freeman on February 2, 2021.

Public Comments:

Steve Verduyn: 425 Andrews St

Steve stated that he is a Board Member of the Phantom Lake Management District. Steve stated that the only way the residents and management of the proposed property would be able to shape the district is to add them; Steve stated that by adding this parcel to the Lake District they can attend Lake District meetings (this is currently available to them), but would be able to vote too. Steve stated this is consistent with another number of properties: Lois Street, Bekum Street; these properties are all included in the Lake District and have a small sliver that grants them access to the lake. Steve stated that the website of the proposed parcel heavily uses lake views and aesthetics to promote their property.

Alan Barrows read an Email sent to him by the Owner (Mikko Erkamaa)

Please present this email tonight from me as owner of the Pointe Apartments LLC.

Dear Commissioners,

I am aware of your intent to include MUKV 2009965004 (.563 acres located on Phantom Lake) and MUKV 2009965003 (4.375 acres with no frontage on Phantom Lake) in the Phantom Lakes Management District. I respectfully object to this request.

With respect to MUKV 2009965004, the parcel is too small to build on and mostly consists of wetlands. Although I concede it has frontage, the District has not previously included the parcel presumably because there is no benefit to the Lakes or parcel itself.

With respect to MUKV 2009965003, the parcel consists of apartments, has no frontage on the Lakes, and is effectively cut off from access by the East Troy Railroad. The railroad right of way is covered with trees and buckthorn and other invasive species so views are blocked and access is limited. There is also no public necessity, health, comfort or welfare benefit attributable to including this parcel as the any potential access is private in nature. As with the other parcel, the District has not previously included this parcel, again, presumably because it did not meet the benefit test.

I would also note that the District is not asking to add the other businesses across the railroad tracks. As a result, this inclusion appears to be an attempt to arbitrarily capture a valuable property for the District's tax base. Moreover, the result would be disproportionate and unfair. Our property would be burdened with the largest portion of taxes when our residents would have little or no use of the Lakes. As you know, this is a competitive market, more costs make it harder to operate effectively.

In conclusion, the District did not include these parcels when the District was formed because it did not meet the public or private benefit test. There remains little or no benefit to our parcel to being included in the District. Furthermore, this decision appears arbitrary when viewed in light of the fact that no other businesses across the right of way are being included. Respectfully, please do not include my property in the District.

Mikko Erkamaa
414-559-5283

Joe Tearney (Counsel for the Property Owner)

Joe stated that he is here to answer further questions. Joe stated that adding the proposed property to the Lake District adds a disproportionate burden to the residents of the apartments on the property. Joe stated that he and his client are okay with potentially adding the small sliver property to the Lake District if it needs to be done, but not the whole apartment complex.

Supervisor Bill Mitchell asked for clarification from Alan on the tax keys. He would like to know if the petition is for the sliver on the lake in addition to the 4+ acre parcel or just the 4+ acre parcel. Alan clarified that the petition for attachment includes the larger parcel only.

Jake Jagmin: 415 Lake St

Jake stated that this petition is to have both included in the boundary and the small sliver is within the district boundary already.

Elizabeth Bingham: W303S10580 Sandy Beach Rd

Elizabeth stated that there is a clear legal precedent for this action; given that there is lake access, there should be taxation – as is the case in the neighborhood.

Supervisor Darlene Johnson

Supervisor Johnson stated that at the Phantom Lake Management District Board Meeting, a majority consented to have this petition started. Supervisor Johnson referenced the letter from the Property Owner

and stated that by having the proposed property added to the Lake District, he (or residents) would be able to come to meetings and vote.

Steve Verduyn: 425 Andrews St

Steve referenced the letter from the Property Owner and made a distinction regarding the other businesses not being brought in. Steve stated that the proposed property, prior to development of the current apartments, was a car dealership. Steve stated that there was no benefit to bringing the property in with such a business; however, residents of the apartments get use of the lake and enjoy that benefit. Steve referenced the letter from the Property Owner in regard to the railroad clearing that provides access to the lake: Steve stated that this area has to be clear of buckthorn and brush to function. Steve also stated that the Property Owner is using the lake views and access in advertising. Steve stated that they cannot have it both ways.

Joann Tlachac-Hehn: 435 Lake St

Joann stated that being on the lake speaks to quality of life; Mukwonago is a small community and lake plays huge portion in that quality of life with activities like: fishing, boating, sunsets. Joann stated that it speaks to their quality of life.

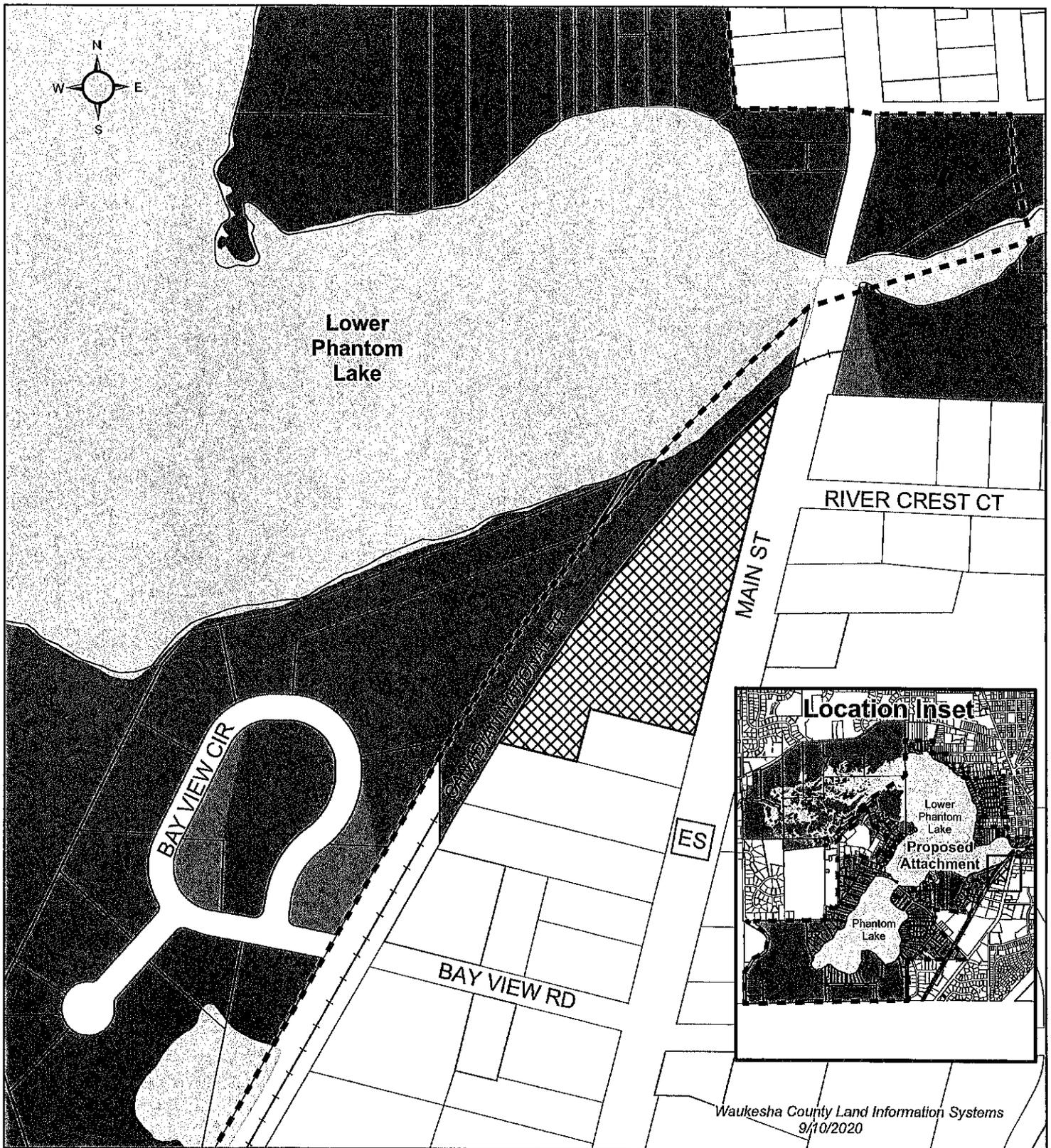
Supervisor Bill Mitchell closed the public comment period

Next Steps:

1. The Phantom Lake District Ad Hoc Committee will report to the County Board within 3 months after the date of the hearing.
2. Within 6 months after the date of the hearing, the County Board shall declare the territory to be either attached or not attached.
3. Appeals to the County Board's decision are made through a petition to the circuit court, not more than 30 days after the Board's decision.

Adjournment by Supervisor Bill Mitchell at 7:32pm.

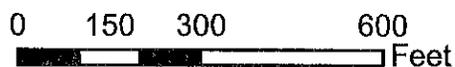
EXHIBIT A



Phantom Lake Protection and Rehabilitation District Proposed Attachment Map

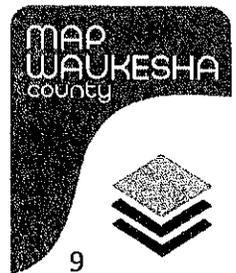
- Current LakeDistrict Boundary
- Current LakeDistrict Parcels
- ▨ Proposed Attachment Area
- Parcels

Referred on: 04/08/21



File Number: 176-O-005

Referred to: LU



January 8, 2021

To: Dale Shaver,
Waukesha County Department of Parks and Land Use

From: Phantom Lakes Management District (PLMD)
PO Box 391
Mukwonago, WI 35149-0391
Email: gonefishing@phantomlakes.us

Rec'd 1/13/21
JR

Re: PLMD Boundaries

Dale,

Pursuant to Wisconsin statutes chapter 33.33(2), the PLMD approved a motion to attach tax key MUKV2009965003 to the district on June 25, 2020. A copy of the approved meeting minutes is attached along with a map detail showing the current district boundaries and property to be attached. The property was created from CSM #11953 and recorded as doc #443148 on 7/29/2020.

As noted in the minutes, the property has deeded access to the lake, which is the case for all district properties. In this instance, it is via deeded access on adjacent property with tax key MUKV2009965004 as recorded on doc # 4496803.

As required by Wisconsin statutes chapter 33.33(2)(b), the property owner was notified of the attachment request and that notification is attached.

Please schedule a hearing as required by Wisconsin statutes chapter 33.33(2)(b) and pursuant to Wisconsin statutes chapter 33.26 at the earliest available time. We request the County Board approve the attachment following those proceedings.

If you need any further documentation or information, please feel free to contact us.

Sincerely,



Joe Graczyk
Chairman, PLMD

Cc: Kathy Karalewitz, Town of Mukwonago
Diana Dykstra, Village of Mukwonago

ATTN:

The Pointe Apartments LLC
W3468 County Road J
East Troy WI 53120-1757

Notice:

The intent of this letter is to inform The Pointe Apartments LLC of a Phantom Lakes Management District boundary modification that impacts Tax Key MUKV2009965003 located at 915 Main St Mukwonago WI 53149. PLMD board members voted in favor of modifying the Phantom Lakes Management District boundary to include this Tax Key in the Phantom Lakes Management District boundary during the publicly posted 6/25/2020 meeting of the Phantom Lakes Management District.

Yours truly,



Chairman or Secretary
Phantom Lakes Management District
P.O. Box 391
Mukwonago, WI 53149

Phantom Lakes Management District
June 25, 2020, 7:00 p.m. Meeting Minutes
Virtual Meeting with audio call in

Approved

1. Call to Order:

Meeting called to order at 7:01 p.m. by Chairman Mark Carlson.

2. Open Meeting Notice:

The meeting was noticed and posted according to law.

3. Board Members Present:

Kathy Verduyn, Steve Verduyn, Joe Kirchner, Dave Dubey, Mark Carlson, Darlene Johnson and Jake Jagmin in attendance. Also present are Melissa Winter, Dawn Couillard, Joanne Tlachac-Hehn and Karen Pakulski.

4. Open Forum:

Nothing

5. Announcements & Correspondence:

Letter from CIC confirming insurance renewal; Folder from G2 insurance agent containing both EMC & CIC insurance policies; email from Joanne regarding Lake District new commissioner voter requirements in 2020; several newsletters; and an email from Wisconsin Lakes hosting a zoom meeting about holding an annual meeting in 2020.

6. Secretary's Report:

Joe Kirchner made a motion to approve the minutes of June 1, 2020. Seconded by Kathy Verduyn. Motion carried.

7. Treasurer's Report:

Total bills to be paid \$10,137.98. Deposit total of \$2,853.53 for bank interest and harvester grant. Mark Carlson made a motion to pay the bills. Kathy Verduyn seconds the motion. Motion carries.

8. Harvesting Report:

Harvesting manager Dawn Couillard provided update.

- Issue of hoses still rubbing after being fixed last August. Had to replace belt tensioner, hydraulic hoses, and oil pump valves this month.
- Dawn has provided correct fluids and greases for truck, conveyor & harvester.
- Discussion on maintenance, harvesting, current crew and possible harvesting tech advisor position.

9. Fish Stocking:

Discussion on stocking the lakes with Walleye and Large Mouth Bass again this year. Steve Verduyn will ask Ben Heussner about next fishery survey of the lakes.

10. Town Property Signs:

PLMD will hold on requesting new signs be put up until the slow, no-wake motion has been reviewed by DNR and village board.

11. PLMD Boundaries:

Motion made by Jake Jagmin to recommend to Waukesha County to amend the PLMD tax district boundary to include tax ID 2009965003 because the property has deeded access to the lake via their adjacent property tax ID 2009965004. The boundary's intent is to include all tax IDs whom have deeded lake access. Motion second by Joe Kirchner. The motion passed with Steve Verduyn, Kathy Verduyn, Joe Kirchner, Dave Dubey and Jake Jagmin voting in favor. Mark Carlson and Darlene Johnson abstained.

12. Lake Patrol Update:

No update.

13. Motion from 2019 Annual Meeting to Change Slow, No-Wake Hours:

Motion was heard and passed by the Town of Mukwonago Board at their June 17, 2020 meeting. Final form of ordinance will be provided by the Town of Mukwonago. Dave Dubey will provide updated ordinance to DNR for their review before submitting to Mukwonago Village Board.

14. Budget:

Discussion on draft budget.

15. Adjournment:

Darlene Johnson made a motion for adjournment at 9:35 p.m., seconded by Jake Jagmin. The motion carried.

Any eligible voter may add a topic to the agenda by contacting a board member at least two weeks prior to the meeting. The Lake Management Board may take action on any item listed on this agenda.

Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, contact Melissa Winter, PO Box 391, Mukwonago, WI (262-378-1267).

VOTING RESULTS

AYE
 NAY
 ABSTAIN
 ABSENT
 3

Ordinance 176-O-005

Ordinance 176-O-005: Order To Attach Territory To Th...



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

D14 - Mommaerts	AYE
D15 - Mitchell	AYE
	ABSENT
D17 - Paulson	AYE
D18 - Nelson	AYE
D19 - Cummings	AYE
D20 - Schellinger	AYE
D21 - Gaughan	AYE
D22 - Wysocki	AYE
	ABSENT
	ABSENT
D25 - Johnson	AYE

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