

ENROLLED ORDINANCE 169-27

ADOPT A REVISED DISTRICT ZONING MAP OF THE WAUKESHA COUNTY
SHORELAND AND FLOODLAND PROTECTION ORDINANCE FOR THE
TOWN OF DELAFIELD TO INCORPORATE THE DSO DELAFIELD
SHORELAND OVERLAY DISTRICT (SZ-1787A)

WHEREAS, the Waukesha County Board of Supervisors enacted the Waukesha County Shoreland and Floodland Protection Ordinance on January 23, 1970, and

WHEREAS, the Waukesha County Board of Supervisors may make amendments to such Ordinance pursuant to Section 59.692, Wisconsin Statutes, and

WHEREAS, the subject matter of this Ordinance having been duly referred to and considered by the Waukesha County Park and Planning Commission after Public Hearing and the giving of requisite notice of said hearing, and the recommendation thereon reported to the Land Use, Parks and Environment Committee and the Waukesha County Board of Supervisors, Waukesha County, Wisconsin as required by Section 59.692 of the Wisconsin Statutes, and


THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that Section 37 of the Waukesha County Shoreland and Floodland Protection Ordinance adopted on June 23, 1970 is hereby amended to adopt a revised district zoning map. The amendments are more specifically described in the "Staff Report and Recommendation" on file in the office of the Waukesha County Department of Parks and Land Use and made a part of this Ordinance by reference SZ-1787A.

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

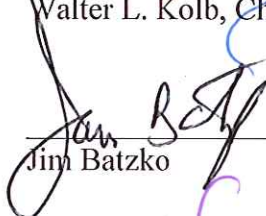
BE IT FURTHER ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

ADOPT A REVISED DISTRICT ZONING MAP OF THE WAUKESHA COUNTY
SHORELAND AND FLOODLAND PROTECTION ORDINANCE FOR THE
TOWN OF DELAFIELD TO INCORPORATE THE DSO DELAFIELD
SHORELAND OVERLAY DISTRICT (SZ-1787A)

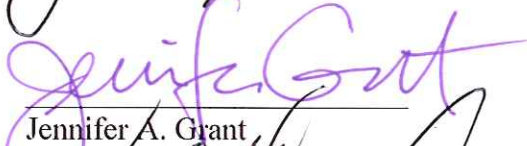
Presented by:
Land Use, Parks, and Environment Committee



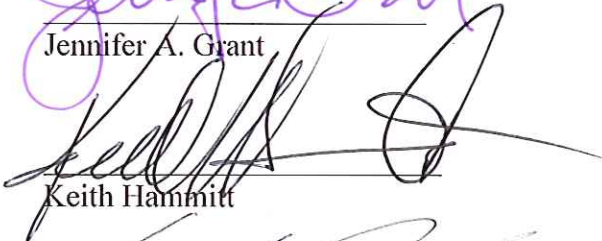
Walter L. Kolb, Chair



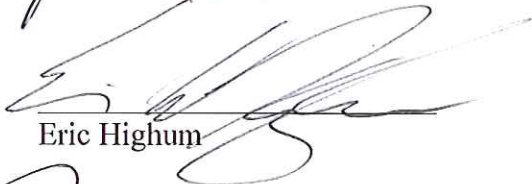
Jim Batzko



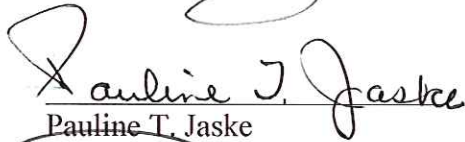
Jennifer A. Grant



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: July 1, 2014, Kathleen Novack, County Clerk
Kathleen Novack, County Clerk

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

Approved: _____
Vetoed: _____
Date: 7-1-14, Daniel P. Vrakas
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE
STAFF REPORT AND RECOMMENDATION
TEXT AND MAP AMENDMENTS
WAUKESHA COUNTY SHORELAND AND FLOODLAND
PROTECTION ORDINANCE

FILE NO.S: SZ-1787 and SZ-1787A
DATE: June 16, 2014
PETITIONER: Waukesha County Park & Planning Commission

REQUEST:
Text (SZ-1787) and map amendments (SZ-1787A) to the Waukesha County Shoreland and Floodland Protection Ordinance (SFPO) to create a DSO, Delafield Shoreland Overlay District which would apply to lands within 1,000' of Pewaukee Lake within the Town of Delafield.

PUBLIC HEARING DATE: June 16, 2014.

PUBLIC REACTION:
An opportunity for public comment will be available at the June 16, 2014 public hearing.

CONFORMANCE WITH THE COMPREHENSIVE DEVELOPMENT PLAN FOR WAUKESHA COUNTY:

The County Development Plan recommends protection of waterways and sensitive shoreland areas. The proposed amendments further those objectives by providing for shore setback and boathouse size and location standards for Town of Delafield shoreline properties within the SFPO. The proposed provisions are consistent with the regulatory scheme that the Town of Delafield has employed for a number of years. These measures will serve to protect shoreline aesthetics for nearby owners and lake users. Research studies have shown that water quality has been determined to directly tied to shoreland property values.

STAFF ANALYSIS:

The Planning and Zoning Division Staff has prepared the subject text amendments (see Exhibit "A", Ordinance) and map amendments to the Waukesha County Shoreland and Floodland Protection Ordinance (SFPO) in order to address two specific shoreland regulatory issues that have previously been administered by the Town of Delafield through their Town Zoning Ordinance. The amendments are proposed in response to recent case law that has clarified that town shoreland zoning ordinance provisions that were adopted after the adoption of the respective county shoreland zoning ordinance cannot be enforced by towns. Because the State Supreme Court has recently declined to hear an appeal of the court case that has brought this issue to light (Hegwood vs. Town of Eagle Zoning Board of Appeals), the decision of the Court of Appeals relative to the Eagle case stands.

At a May 30, 2014 meeting, the Town of Delafield Planner and Attorney expressed concern to County staff regarding the Town's inability to continue to enforce the Town's shore setback standards. It is believed that the Town of Delafield did not adopt its current required shore setback requirement of 150' prior to the effective date of the County SFPO (June 23, 1970). Accordingly, County Parks and Land Use Staff

Waukesha County Shoreland and Floodland Protection Ordinance

consulted with Corporation Counsel and the decision was made to prioritize this issue and prepare the subject text and map amendments to ensure that the pattern of development within Pewaukee Lake shoreline areas could be maintained in line with the desire of the Town. The proposed amendments are limited to the creation of an overlay district that would apply to lands within 1,000' of Pewaukee Lake. The overlay district would provide special parameters for shore setback, shore setback averaging and boathouse size and location only. All other underlying use and location requirements would continue to be as specified within the underlying zoning district.

The proposed SFPO Delafield Shoreland Overlay District would incorporate the pre-existing Town shore setback and setback averaging parameters into the SFPO. The SFPO shoreland setback standards require structures, other than boathouses, to be setback a minimum of 75' from the ordinary high water mark of the lake unless shore setback averaging is available. Setback averaging allows for reduced setbacks if there are structures closer to the lake than the required shore setback. The pre-existing Town zoning provisions required a 150' shore setback with fairly similar setback averaging provisions. Because many structures were required to be constructed a minimum of 150' from the lake over the past couple of decades, the introduction of a significantly less restrictive shore setback requirement could present the possibility of homes adjacent to newer lake homes being significantly closer to the lake than the pattern of development, which could adversely affect lake views and property values. In addition, a lesser setback would run counter to the Town's intent in creating the more stringent setback which was presumably to provide for enhanced shoreline aesthetics and improved lake conditions. It should also be noted that many lake lots within the Town are particularly long or deep, which makes an increased setback more viable than in some other parts of the County.

In preparing the subject amendments, the Planning and Zoning Division Staff observed that the Town of Delafield's boathouse size and location standards were also more specific than the current SFPO language. Accordingly, the proposed amendment also mirrors pre-existing Town language to incorporate the boathouse standards into the overlay district requirements. Specifically, the pre-existing Town of Delafield Zoning Ordinance requirements call for a maximum boathouse size of 600 square feet, with no less than 200 square feet of the building area devoted to boat storage. In addition, the Town Ordinance sets a maximum boathouse width for the wall nearest the shoreline of twenty (20) feet, with no boathouse permitted to extend more than thirty-five (35) feet from the shore. While the SFPO sets a minimum boathouse size and regulates maximum accessory building floor area ratio, there is no specific maximum size established for boathouses, themselves. In prior conversations with the Department of Natural Resources, County Planning and Zoning Division Staff has validated that most counties within the State do impose a maximum boathouse size standards in order to minimize aesthetic and habitat impacts of such structures. County staff plans to propose a maximum boathouse size provision for all jurisdictional shoreland areas in the future as part of a larger update to the SFPO to incorporate the amended State shoreland zoning rules. In absence of such a County-wide standard, at present, this text amendment will carry forward the Town of Delafield maximum boathouse size standard of 600 square feet along with the other related boathouse dimensional regulations. These standards are proposed to apply only within Delafield Shoreland Overlay District and will result in no net change in the way that Delafield shoreline properties are regulated with regards to boathouses.

Waukesha County Shoreland and Floodland Protection Ordinance

STAFF RECOMMENDATION:

It is the opinion of the Waukesha County Planning and Zoning Division Staff that the proposed text and map amendments to the Waukesha County Shoreland and Floodland Protection Ordinance (SFPO) be approved. The proposed Delafield Shoreland Overlay District will incorporate key shoreland zoning regulations that were formerly administered by the Town of Delafield into the County Shoreland and Floodland Protection Ordinance because such provisions can no longer be enforced by the Town. The incorporation of shore setback and boathouse regulations that are consistent with the Town's pre-existing ordinance into the County SFPO will ensure that shoreline development patterns remain harmonious and will also ensure preservation of shoreline aesthetics and property values. The other use and area standards of the underlying SFPO districts will remain unchanged for properties that are subject to the overlay district. In the near future, the Planning and Zoning Division Staff will seek additional input from towns within the County in order to consider whether further SFPO amendments are needed to address more restrictive town shoreland zoning provisions. Staff believes that the above referenced setback and boathouse standards are the most notable departure from the County SFPO and, hence, the urgency to address those particular issues at this time.

Respectfully submitted,

Jason Fruth

Jason Fruth
Planning and Zoning Division Manager

Attachments: Exhibit "A" (proposed text amendments with changes tracked)
Ordinance

Map (Proposed Town of Delafield Zoning Map available on County website at
www.waukeshacounty.gov/planning under "Mapping Resources.")

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**AMENDMENTS TO THE WAUKESHA COUNTY SHORELAND &
FLOODLAND PROTECTION ORDINANCE**

SECTION 1

EXHIBIT "A"

Repeal and Recreate the Table of Contents to read as follows:

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Editor's Note

Updated for changes made through
Enrolled Ordinance 168-3, which
became effective 04-23-2013.

SECTION 2

Repeal and Recreate Section 3(h)(1)(I) to read as follows:

Every structure, except boathouses and any other structure excepted from shore setback by another Section of this Ordinance, shall have a shore setback of at least seventy five (75) feet from the ordinary high water mark of navigable waters, the floodplain, or the conservancy district, whichever distance is greater, except (see also Section 37, Delafield Shoreland Overlay District):

- i. Boathouses may be permitted in accordance with Section 3(s) of this Ordinance.
- ii. Boat hoists and piers may be erected on the bed of navigable waters pursuant to Chapter 30 of the Wisconsin Statutes and Section 3(d)5.C of this Ordinance.
- iii. Under the authority of Section 59.692(1v), Wisconsin Statutes, the zoning administrator may grant a special zoning permit for a structure that extends closer than seventy five (75) feet to the ordinary high water mark of a navigable body of water if all of the following requirements are met, but in no case is a structure exempt from the shore setback requirements from the Conservancy District boundary line:
 - a. The part of the structure that is nearest to the water is located at least thirty five (35) feet landward from the ordinary high water mark.
 - b. The total floor area of all structures in the shore setback area of the property shall not exceed two hundred (200) square feet. In calculating the square footage, boathouses shall be excluded.
 - c. The structure that is subject to the request for special zoning permission has no sides or has open or screened sides.
 - d. The zoning administrator shall review a plan submitted by the applicant which shall be subject to the zoning administrator's approval and which will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least seventy (70) percent of half of the shore setback area that is nearest to the water. The zoning administrator is authorized to require implementation of the vegetative buffer plan prior to the issuance of the zoning permit for the structure.

- iv. A retaining wall shall be set back at least seventy five (75) feet from the ordinary high water mark of a navigable body of water and outside of the conservancy district and wetlands and may be allowed if the zoning administrator determines that the retaining wall is necessary to abate a known and identified soil erosion and sedimentation problem. The setback averaging provisions below may not be used to locate a retaining wall closer than seventy-five (75) feet from the ordinary high water mark of a navigable body of water or within the conservancy district and wetlands. A retaining wall is not a structure that can be used in the setback averaging provisions below to reduce the shore setback or conservancy setback requirements for any other building or structure, including retaining walls themselves.
- v. A single stairway or walkway, determined by the zoning administrator, due to steep topography, to be necessary for access to a lake, pond or river, shall be permitted to have a shore setback of less than seventy five (75) feet provided the width of the stairway or walkway does not exceed four (4) feet, subject to the issuance of a Zoning Permit.
- vi. Where there is an existing pattern of development with principal buildings having shore setbacks less than seventy five (75) feet from the ordinary high water mark of a navigable body of water or the Conservancy District boundary line, the setback requirements for new principal buildings or additions to the principal building or structures immediately adjacent thereto (such as decks or patios, but not including retaining walls and swimming pools and sports courts) shall be allowed to be reduced in accordance with the following setback averaging formulas, however, in no case shall the required minimum shore setback from the ordinary high water mark or Conservancy District boundary be reduced to less than thirty (30) feet and, if more restrictive, the setback averaging provisions of the Delafield Shoreland Overlay District shall apply to properties zoned as such, in accordance with Section 37 of this Ordinance:
- a. If there is a building which is non conforming with respect to shore setback with a similar use as the proposed building and located on an adjacent parcel on one side of the proposed building and within two hundred (200) feet of the proposed building, the average of the shore setback of that building of similar use and the required minimum shore setback shall apply.
- b. If there are two buildings that are non conforming with respect to shore setback with similar uses as the proposed building and located on adjacent parcels on each side of the proposed building and within two hundred (200) feet of the proposed building, the average of the shore setbacks of the two buildings of similar use shall apply.
- c. In the case of a proposed addition to an existing building which has less than the required shore setback, the shore setback of the addition shall be calculated by the average of the existing building and the shore setback of an existing building with a similar use as the proposed addition if it is located on the adjoining parcel on the same side as the proposed addition and within two hundred (200) feet of the proposed addition.
- d. In the case of a proposed addition to an existing building, which has less than the required shore setback, if there are not similar uses on either adjoining parcels, the shore setback of the addition shall be calculated by the average of the existing

building and the required minimum shore setback.

- e. The effect of the shore setback regulations in combination with the road setback regulations shall not reduce the buildable depth of such lot to less than thirty (30) feet. Where such reduction would result in a depth less than thirty (30) feet after applying the shore setback and road setback averaging formulas, the zoning administrator shall have the authority to modify the road setback, shore setback, and offset provisions to the extent necessary to minimize the encroachment on the offset and setback standards while maintaining the thirty (30) foot depth.
- f. In applying these shore setback averaging formulas to a proposed principal building or addition to a principal building, the shore setback measurements shall be taken from other principal buildings only and the measurements shall not be from any immediately adjacent structures, such as decks, patios, retaining walls, swimming pools or sports courts.
- g. In applying these shore setback averaging formulas to a proposed structure, such as a deck or patio, which is immediately adjacent to the principal building, the shore setback measurements may be taken from other principal buildings or immediately adjacent structures, such as decks or patios, but not from retaining walls and swimming pools and sports courts.
- vii. A principal building, an addition to a principal building or a deck or patio immediately adjacent to a principal building may be located as close as fifty (50) feet from the Conservancy District boundary if it is in conformity with the required shore setback from the ordinary high water mark and if the existing natural ground elevation adjacent to the lowest level of the principal building, including an exposed basement, is at least three (3) feet above the regional flood elevation or the high water mark of the conservancy area.
- viii. Within the Delafield Shoreland Overlay District, shore setback requirements are as specified within Section 37 of this Ordinance and re-stated as follows: All structures within the Delafield Shoreland Overlay District, except boathouses and any other structure excepted from shore setback by another section of this Ordinance, shall setback a minimum of 150' from the Ordinary High Water Mark of a navigable waterway, with the following exceptions:
 - a. Where the nearest principal building or structure on one side of a proposed principal building or structure is within 500 feet and has less than the required shore lot line offset and the nearest principal building or structure on the other side of a principal building or structure is 500 feet or greater away, the average between such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.
 - b. Where the nearest principal buildings or structures on both sides of a proposed principal building or structure are within 500 feet, but neither is closer than 300 feet to the proposed principal building or structure and each have less than the required shore lot line offset, the average of such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.

- c. Where the nearest principal buildings or structures on both sides of a proposed building or structure are each within 300 feet of the proposed principal building or structure and each have less than the required shore lot line offset, the average between such existing principal buildings or structures shore lot line offset shall apply.
- d. In the case of a proposed addition to an existing building or structure which has less than the required shore lot line offset, such existing building or structure may be considered the "nearest principal building or structure" in order to apply the aforesaid exceptions in determining required shore lot line offset for the proposed addition.

SECTION 3

Repeal and Recreate Section 3(s) to read as follows:

(s) Boathouses

1. Use permitted: Boathouses, as defined by this Ordinance and in Section 30.01(1d) of the Wisconsin Statutes, are permitted in any district abutting a public or private body of water in which a single-family dwelling is permitted by right and subject to the terms and the conditions set forth herein and Section 30.121 of the Wisconsin Statutes. Said boathouse may be used for the storage of marine and accessory items used by the occupants of the lot. Said boathouse shall be placed on a permanent foundation extending below the frost line or a concrete slab and shall contain at least two hundred (200) square feet in area to be considered a boathouse.
2. Habitation prohibited: A boathouse may not be used for human occupancy or habitation. A boathouse may contain limited plumbing facilities for occasional use and convenience of the occupants of the lot such as having a toilet facility or shower facility convenient for users of the lakefront, but under no circumstances may the boathouse be used for human habitation, human habitation being defined as utilizing the building for occupancy for overnight living or longer periods of time and including the aggregate of normal living activities such as lounging, cooking, eating, sleeping, etc.
3. Accessory to a single-family dwelling: No boathouse is permitted unless a single family dwelling is already present on the lot. Only one (1) boathouse per lot is allowed.
4. Building location: A boathouse shall not be located closer than five (5) feet to the ordinary high water mark or further than fifty (50) feet from the ordinary high water mark. A boathouse shall not be located within the floodplain and/or wetland. Its location relative to offsets shall be in accordance with the standards set forth in Section 3(h)2 of this Ordinance. Within the Delafield Shoreland Overlay District, no boathouse shall extend more than thirty-five (35) feet from the Ordinary High Water Mark of the adjacent waterway (also see Section 37).

5. Flat roofed surfaces of boathouses may be used as open recreational living areas but shall not be permanently enclosed. Canopies, railings, and access stairs shall be considered ordinary appurtenances.
6. The maintenance and repair of nonconforming boathouses that extend beyond the ordinary high water mark of any navigable water shall be required to comply with Section 30.121 of the Wisconsin Statutes.
7. Boathouses prohibited: No boathouse shall be allowed on any lot that is less than 15,000 square feet in size or any lot having a minimum average width of less than 100 feet.
8. Height: A boathouse may not contain more than one floor level and shall not exceed fifteen (15) feet in total height, as defined in this Ordinance.
9. Maximum size: Within the Delafield Shoreland Overlay Zone, no boathouse shall be larger than 600 square feet in area with a minimum of 200 square feet of boat storage space and a maximum width parallel to the shore lot line of 20' (also see Section 37).

Section 4

Repeal and Recreate Section 37 to read as follows:

Section 37 (Reserved) DSO Delafield Shoreland Overlay District

- (a) Applicability: This overlay district, as mapped or intended to be mapped, includes properties within the Town of Delafield that are located within 1,000' of Pewaukee Lake.
- (b) General regulations: All use, location, area, height and other general provisions of the underlying zoning district and other general requirements of this Ordinance shall apply within the DSO District, unless more specifically prescribed within Section 37(b) or 37(c) below:
- (c) Shore Setback (also see Section 3(h)(1)(I))

All structures within the DSO District, except boathouses and any other structure excepted from shore setback by another section of this Ordinance shall be setback a minimum of 150' from the Ordinary High Water Mark of a navigable waterway, with the following exceptions.

1. Where the nearest principal building or structure on one side of a proposed principal building or structure is within 500 feet and has less than the required shore lot line offset and the nearest principal building or structure on the other side of a principal building or structure is 500 feet or greater away, the average between such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.

2. Where the nearest principal buildings or structures on both sides of a proposed principal building or structure are within 500 feet, but neither is closer than 300 feet to the proposed principal building or structure and each have less than the required shore lot line offset, the average of such existing shore lot line offset of the nearest principal building or structure and the required shore lot line offset shall apply.
3. Where the nearest principal buildings or structures on both sides of a proposed building or structure are each within 300 feet of the proposed principal building or structure and each have less than the required shore lot line offset, the average between such existing principal buildings or structures shore lot line offset shall apply.
4. In the case of a proposed addition to an existing building or structure which has less than the required shore lot line offset, such existing proposed building or structure may be considered the "nearest principal building or structure" in order to apply the aforesaid exceptions in determining required shore lot line offset for the proposed addition.

(d). Boathouses (also see Section 3(s))

No boathouse shall be larger than 600 square feet in area with a minimum of 200 square feet of boat storage space and a maximum width parallel to the shore lot line of 20'. Boathouses shall not extend more than thirty-five (35) feet from the Ordinary High Water Mark of the adjacent waterway.

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WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-06/24/14

(ORD) NUMBER-1690027

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.....	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.....AYE	24 S. WHITTOW.....AYE
25 G. YERKE.....AYE	

TOTAL AYES-24

TOTAL NAYS-00

CARRIED _____

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-24