

ENROLLED ORDINANCE 171-5

AMEND THE TEXT OF THE TOWN OF LISBON ZONING ORDINANCE
TO REPEAL AND RECREATE CHAPTER 11, SECTION 3(c)10,
RELATING TO DRAINAGE REGULATIONS (ZT-1701B)

WHEREAS, after proper notice was given, a public hearing was held and the subject matter of this Ordinance was approved by the Lisbon Town Board on June 8, 2015, 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 60.62, Wis. Stats.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA ORDAINS that the text of the Town of Lisbon Zoning Ordinance, adopted by the Town of Lisbon on April 9, 2010, is hereby amended to repeal and recreate Chapter 11, Section 3(c)10 relating to drainage regulations, 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 ZT-1701B, is hereby approved.

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

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ORDAINED that all Ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

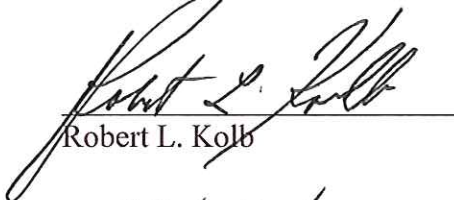
AMEND THE TEXT OF THE TOWN OF LISBON ZONING ORDINANCE
TO REPEAL AND RECREATE CHAPTER 11, SECTION 3(c)10,
RELATING TO DRAINAGE REGULATIONS (ZT-1701B)

Presented by:
Land Use, Parks, and Environment Committee


David D. Zimmermann, Chair

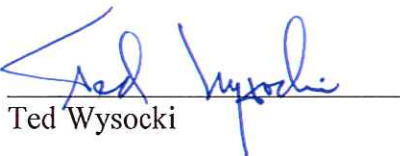

Kathleen M. Cummings


Keith Hammitt


Robert L. Kolb


William Mitchell


Thomas J. Schellinger


Ted Wysocki

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

Date: 5/24/16, 
Kathleen Novack, County Clerk

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

Approved: X

Vetoed: _____

Date: 6/2/16, 
Paul Farrow, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-04/24/16 NUMBER-1710005

1 R. KOLB.....AYE	2 D. Zimmermann.....AYE
3 R. MORRIS.....AYE	4 J. BATZKO.....AYE
5 J. BRANDTJENAYE	6 J. WALZ.....AYE
7 J. GRANT.....AYE	8 E. HIGHUMAYE
9 J. HEINRICH.....	10 D. SWAN.....AYE
11 C. HOWARD.....AYE	12 P. WOLFF.....AYE
13 P. DECKER.....AYE	14 C. PETTISAYE
15 B. MITCHELL.....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. JASKEAYE
23 K. HAMMITT.....	24 S. WHITTOW.....
25 G. YERKEAYE	

TOTAL AYES-22

TOTAL NAYS-00

CARRIED_____

DEFEATED_____

UNANIMOUS X

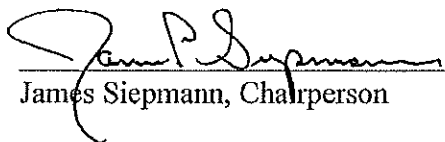
TOTAL VOTES-22

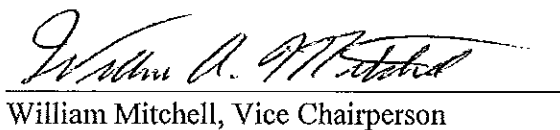
COMMISSION ACTION

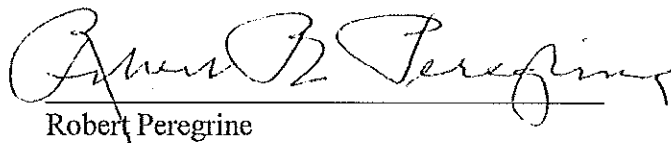
The Waukesha County Park and Planning Commission after giving consideration to the subject matter of the Ordinance to amend the Town of Lisbon Zoning Ordinance hereby recommends approval of **ZT-1701B (Text Amendment-Drainage Regulations)** in accordance with the attached "Staff Report and Recommendation".

PARK AND PLANNING COMMISSION

April 21, 2016

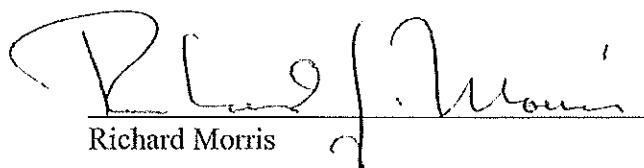

James Siepmann, Chairperson

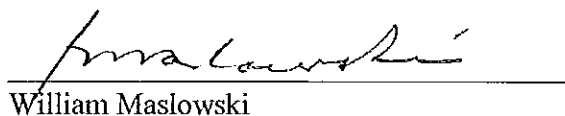

William Mitchell, Vice Chairperson


Robert Peregrine

Absent
Gary Goodchild

Absent
Keith Hammit


Richard Morris


William Maslowski

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

FILE NO.: ZT-1701B

DATE: April 21, 2016

TAX KEY NO.: N/A

PETITIONER: Town Board of Lisbon
Town of Lisbon Town Hall
W234 N8676 Woodside Road
Lisbon, WI 53089

REQUEST:

Amendment to the Drainage Regulations, Section 3(c)10, of the Town of Lisbon Zoning Ordinance pertaining to the site drainage standards, in particular, the depth from the bottom of the basement floor to the highest seasonal ground water level in the Town.

PUBLIC HEARING DATE: December 18, 2014.

PUBLIC REACTION:

One member of the audience requested that the review and approval process remain with the Plan Commission and not be the sole responsibility of the Town Building Inspector. Sandy Scherer, Town of Lisbon's Community Assistance Planner, sent suggested revisions on December 9, 2014, commenting on the proposed amendments. The Town Engineer recommended the Plan Commission consider comments 3, 4, 5 and 6 of the recommended revisions.

TOWN PLAN COMMISSION ACTION:

On December 18, 2014, the Town of Lisbon Plan Commission recommended approval of the proposed amendments to the Town of Lisbon Zoning Ordinance relating to the drainage regulations to the Town Board as follows: Maintain the three (3) foot basement/groundwater separation as a general requirement. Allow an 18 inch separation if a sealed sump crock is utilized and a properly executed Hold Harmless Agreement is filed in favor of the Town. Allow a 12 inch separation so long as a drain to daylight with back up sump crock and pump are installed and a properly executed Hold Harmless Agreement is filed in favor of the Town. Also, the review of the groundwater separation issues shall not be changed from the Plan Commission to the Town Building Inspector and Town Engineer, and the installation of a secondary power source (gas or diesel generator) shall not be required.

On May 14, 2015, the Town Clerk brought the Town Attorney's comments on the proposed amendments to the attention of the Plan Commission and asked if they would like to amend their original decision. The Plan Commission voted to table any further decision on the matter until they had a chance to review the Town Attorney's suggested revisions.

On June 4, 2015, a Town Plan Commissioner offered a different interpretation of what the Plan Commission had previously discussed. The Town Engineer stated that either interpretation should reduce the number of waivers needed as well as appearances in front of the Plan Commission. Another Plan commissioner was concerned about who would be responsible for following up on the waivers to ensure things were constructed properly, including the exit pipes. The Building Inspector stated that he will perform inspections before any

permits are issued and the Town Engineer will also be reviewing the plans. If a plan is to go less than three feet and drain to daylight, a Hold Harmless Agreement will need to be signed and recorded in the Waukesha County Register of Deeds office. The homeowners are responsible for maintaining the exit pipes.

On January 7, 2016, the Town Plan Commission reaffirmed their approval from December 18, 2014, and gave their final approval of the Drainage Regulations Ordinance No. 03-15. The Town Clerk stated that the Town Attorney would be reviewing Ordinance No. 03-15.

TOWN BOARD ACTION:

On January 12, 2015, the Town of Lisbon Board of Supervisors approved the amendments to the Town of Lisbon Zoning Ordinance relating to the drainage regulations as recommended by the Plan Commission.

On April 27, 2015, the Town of Lisbon Board of Supervisors tabled approval of Ordinance No. 03-15, "an Ordinance Repealing and Recreating Chapter 11, Section 3(c)(10) of the Town of Lisbon Code of Ordinances Pertaining to Drainage Regulations" so that the original motion could be clarified by the Town Clerk.

On June 8, 2015, the Clerk reported back to the Board that the amendments have been thoroughly discussed by both the Plan Commission and the Board and he believes the text amendments, as modified by the Plan Commission's motion, accurately reflect the intent of the Plan Commission. The Ordinance received a unanimous recommendation from the Plan Commission for the Board to approve. The Board unanimously approved said Ordinance.

STAFF ANALYSIS:

When the Town prepared their updated Zoning Ordinance in 2010, they wanted to maintain the three foot separation to groundwater even though, at the time, they were advised the County had a one foot minimum separation requirement. The Town had the three foot separation for years and did not want to vary from that standard.

However, after experiencing a number of appearances before the Plan Commission for waivers of this provision due to increasing development in more marginal soils, the Town is now proposing to amend their Drainage Regulations to more closely align with those of the County's (refer to Exhibit A). The new separation standard will be 18 inches. There is also a one foot absolute minimum separation requirement if a waiver is approved. In both cases a Hold Harmless Agreement is required.

The Town also enhanced the following paragraph: If the outlet is located in a roadside ditch, its invert must be a minimum of 18 inches above the ditch flow line. A sump pump is required with discharge to the surface as a redundant ground water removal system and the sump pump must be equipped with a sealed pump crock. An auxiliary power source of natural gas or propane gas fuel to a backup generator is recommended if groundwater separation is reduced to anything less than the one foot requirement through the waiver process, and an auxiliary power supply is recommended in any instance noted above so the sump pump remains operative in the event of a power outage.

Finally, the Town added language prohibiting the obstruction of drainage and the natural flow of surface water, in addition to restricting building distance adjacent to drainage channels or watercourses and also that the lowest floor must be three feet above the ordinary high water mark.

STAFF RECOMMENDATION:

It is the opinion of the Planning and Zoning Division Staff that the amendments to the Town of Lisbon's Drainage Regulations be **approved** in accordance with the Town Board's original decision on January 12, 2015. In the five years since the Town's comprehensive rezoning effort in 2010, there have been a number of Town residents who have sought relief from the zoning regulations relative to the drainage regulations. After numerous staff level discussions and consideration at public meetings, the Town feels they have come up with revisions to the drainage regulations that protect the groundwater resources, as well as the Town and its residents. The revisions are also more in alignment with the Town and County Comprehensive Development Plans and the County's Zoning and Stormwater Ordinances so the administration of these regulations will be more consistent across all levels of government.

Respectfully submitted,

Sandra L Scherer

Sandy Scherer
Senior Planner

Attachments: Town Ordinance 03-15
Exhibit "A" - Drainage Regulation amendments

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**AN ORDINANCE TO REPEAL AND RECREATE CHAPTER 11, SECTION 3(c)10 OF
THE TOWN OF LISBON CODE OF ORDINANCES PERTAINING TO DRAINAGE
REGULATIONS.**

WHEREAS, Pursuant to Wis. Stat. § 60.10(2)(c), 60.22(3), 60.61, 60.62(1), 61.35, 62.23(7)(d)2, and 66.0103, the Town of Lisbon adopted Chapter 11 of the General Code of Ordinances on January 25, 2010, as the "Town of Lisbon Zoning Ordinance" hereinafter referred to as the "Zoning Ordinance"; and

WHEREAS, From time to time the Town of Lisbon may make amendments to such Ordinance pursuant to Wis. Stat. § 62.23(7)(d)2; and

WHEREAS, The Town of Lisbon has proposed such amendments to Section 3(c)10 Drainage Regulations of the Zoning Ordinance and the Town of Lisbon Plan Commission and Town Board held a joint public hearing on December 18, 2014 regarding such amendments, following the notice and procedures of Wis. Stat. § 985 and Section 35 and Section 36 of the Zoning Ordinance; and

WHEREAS, The amendments have been duly referred, considered and recommended for approval by the Town Plan Commission at its meeting of December 18, 2014; and

WHEREAS, The Town Plan Commission has forwarded the proposed amendments to the Town Board of the Town of Lisbon with its recommendation that the amendments be approved; and

WHEREAS, Upon adoption of the Zoning Ordinance in 2010, a copy, in loose leaf form, was filed and certified by the Town Clerk, and such certified copy remains on file in the office of said Town Clerk, at W234 N8676 Woodside Road, Lisbon, WI, 53089, to be made available to persons desiring to examine the same during regular office hours and at all times while said Zoning Ordinance is in effect; and

WHEREAS, Any and all amendments, supplements, and changes to the Zoning Ordinance, including the amendments proposed herein, when adopted in such form as to indicate the intention of the Town Board to make them a part of the Zoning Ordinance, shall be deemed to be incorporated into such Zoning Ordinance so that reference to the Town of Lisbon Zoning Ordinance shall be understood and intended to include such amendments, supplements or changes. Whenever such amendments, supplements, or changes to the Zoning Ordinance are adopted, they shall thereafter be printed and inserted in the loose-leaf book containing said Zoning Ordinance as amendments, supplements, and changes thereto; and

WHEREAS, Sufficient copies of the Zoning Ordinance with its amendments, supplements, and changes thereto shall be maintained in the office of the Clerk for inspection by the public at all times during regular office hours, and the enactment and publication of this Ordinance as required by law, coupled with the availability of a copy of the Zoning Ordinance for inspection by the public, shall be deemed, held, and considered to be due and legal publication of all provisions of the Zoning Ordinance for all purposes.

NOW THEREFORE, THE TOWN OF LISBON BOARD OF SUPERVISORS ORDAINS, That pursuant to Wis. Stat. § 62.23(7)(d)2, the text of the Town of Lisbon Zoning Ordinance is hereby amended in accordance with the amendments on file with the Town Clerk, and hereby approves this Ordinance and directs the Town Clerk to file a certified copy of this Ordinance in the office of the Town Clerk.

BE IT FURTHER ORDAINED, That all ordinances or parts of ordinances conflicting with or contravening with the provisions of this ordinance are hereby repealed.

BE IT FURTHER ORDAINED, That after acting on the Ordinance, the Town Board shall submit said Ordinance with the minutes of the public hearing(s) directly to the Waukesha County Department of Parks and Land Use for consideration by the County. Proof of publication of the notice of the public hearing(s) held by the Town shall be included with the Ordinance and minutes.

BE IT FURTHER ORDAINED, That this Ordinance shall take effect upon passage and publication as required by law.

ADOPTED this 14 day of December, 2015.

TOWN BOARD, TOWN OF LISBON,
WAUKESHA COUNTY, WISCONSIN,

BY: 
JOSEPH OSTERMAN, Chairman

BY: 
REBECCA PLOTECHER, Supervisor

BY: 
RYAN LIPPERT, Supervisor

BY: <Vacant>
STEVE PANTEN, Supervisor

BY: 
HANNAH HEINRITZ, Supervisor

ATTEST:

BY: 
MATTHEW J. NECKE, Town Administrator/Clerk

EXHIBIT "A"

10. Drainage Regulations:

i. In no case may a principal building be constructed, erected, converted, or relocated in an area zoned conservancy (including areas zoned EFD unless required approvals are obtained), or in an area considered to be one of the eight (8) types of wetlands (type 1-8) as described in Circular 39 of the Fish and Wildlife Service, U. S. Department of Interior published in 1956, and which are on record on the 1975 aerial maps of the Southeastern Wisconsin Regional Planning Commission. No principal building shall be constructed, erected, altered, converted, or relocated, and no below grade structures shall be expanded on newly created or existing lots that are not in compliance with the site drainage standards contained in the Waukesha County Storm Water Management and Erosion Control Ordinance, including all county technical procedures and forms used to enforce these standards (Chapter 14-342(c)) unless the Town of Lisbon imposes more restrictive requirements. The lowest floor, including any basement floor, shall not be less than three (3) feet above the highest seasonal ground water elevation except under the following circumstances:

- a. If a sealed sump crock with a water tight cover is used, the lowest floor may not be less than 18" above the highest seasonal ground water level.
- b. If a gravity outlet is utilized and a backup sump crock and pump area installed, the lowest floor may not be less than 12" above the highest seasonal ground water level.

In all cases where the separation is less than 3' the applicant shall record a hold-harmless agreement in favor of the town in the Waukesha County Register of Deeds office, prior to a Building Permit being issued. The Building Inspector or Town-contracted Engineer shall issue the Building Permit for separation from 3' to 12" when all of the above requirements have been met, however, separation that does not meet the above requirements or is less than 12" must request a waiver from the Town of Lisbon Plan Commission.

ii. All appeals or waivers shall be reviewed by the Town of Lisbon Plan Commission. For the purposes of this section, the highest seasonal ground water level is defined as the upper limit of the zone of soil saturation caused by underlying ground water at its highest level. Where groundwater limitations exist, subdivision plats and certified survey maps shall state, on their face, the lowest allowed floor elevation for any proposed principle structure, as needed to ensure compliance with the above noted site drainage standards. All basement elevations must comply with the subdivision plat or certified survey map master grading plan or with the master grading plan referenced on the subdivision plat or certified survey map. At least one soil boring shall be conducted at the house site in order to determine the soil conditions for the building, foundation, and/or basement. The building inspector may request, at the owners' expense, the advice and assistance of a licensed professional engineer specializing in soils engineering or other qualified person working on behalf of the town in fulfilling his or her duties pursuant to this provision. Building, drainage, grading or other similar plans may be required to determine compliance with this section. The town accepts no liability for construction activities involving groundwater limitations.

iii. In the event the applicant disputes the necessity for, or the adequacy of, the site drainage standards noted above, the matter shall be reviewed, and a determination made, by the Town of Lisbon Plan Commission. The applicant may also request a variance from the three (3) foot groundwater separation requirement for basements which shall be reviewed by the Town of Lisbon Plan Commission. In making their decision, the Plan Commission shall determine (1) how much of the basement shall be allowed to be constructed out of the ground, if any, (2) how much, and in what configuration, fill shall be allowed to be placed around the structure, and if minor

EXHIBIT "A"

grading or conditional use permits will be required, (3) if the building shall be allowed to have a basement at all, and (4) if development on the site should be prohibited. The determination of whether or not the building shall have a basement at all or whether or not the site should be developed shall be based on the recommendation from the licensed professional engineer specializing in soils engineering, and working on behalf of the town, at the owner's expense as noted above. However, in no case shall the separation requirement for basements (lowest floor) be less than one (1) foot.

iv. In the event a variance is approved, a gravity outlet shall be provided to the drain tiles of the building. The outlet must be above the 100 year flood elevation and be equipped with a back flow prevention device, and the drain to daylight must have a minimum slope of 1.04%, insulation, a rodent guard, and a clean out.

v. If the outlet is located in a roadside ditch, its invert must be a minimum of 18 inches above the ditch flow line. A sump pump is required with discharge to the surface as a redundant ground water removal system and the sump pump must be equipped with a sealed pump crock. An auxiliary power source of natural gas or propane gas fuel to a backup generator is recommended if groundwater separation is reduced to anything less than the one foot requirement through the waiver process, and an auxiliary power supply is recommended in any instance noted above so the sump pump remains operative in the event of a power outage.

vi. All existing drain tile locations on or adjacent to property proposed to be developed, shall be identified, if known, and said information shall be provided to the Town Plan Commission and Town Board for review, and/or located on the preliminary subdivision plat or Certified Survey Map.

vii. Obstruction of drainage is prohibited. The damming, filling, relocating, or otherwise interfering with the natural flow of surface water along any surface water drainage channel or natural water course, shall not be permitted except with the approval of the Town Plan Commission and the Waukesha County Park and Planning Commission.

viii. Building is restricted adjacent to drainage channels or watercourses. No building other than a bridge, dam, or revetment subject to the aforementioned approval, shall be constructed, erected, altered, or relocated within 20 feet of the ordinary high water mark of such surface water drainage channel or natural watercourse, nor so that the lowest floor of said building is less than three (3) feet above the ordinary high water mark.

The Town of Lisbon shall not be held liable for adverse effects which may occur on any property resulting from high groundwater conditions in the area.

For the purposes of this section, in the Town of Lisbon, the datum plane used shall be mean sea level, 1929 adjustment.