

ENROLLED ORDINANCE 166-107

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 REZONING CERTAIN LANDS LOCATED IN SECTIONS 3, 10, AND 15, T8N, R18E, TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN, TO ADOPT A DAM FAILURE ANALYSIS FOR THE MONCHES MILL POND DAM AND REZONE LANDS WITHIN THE HYDRAULIC SHADOW OF THE DAM FAILURE FROM VARIOUS DISTRICTS TO THE C-1 CONSERVANCY DISTRICT (TOWN AND COUNTY). ESTABLISH UPLAND ZONING DESIGNATIONS FOR LANDS THAT ARE NO LONGER WITHIN THE REGULATED FLOODPLAIN (TOWN)  
(SZT-1729)

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 Sections 59.692 and 60.61 of the Wisconsin State Statutes.

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 hereby amended to rezone certain lands located in part of Sections 3, 10 and 15, T8N, R18E, Town of Merton, Waukesha County, Wisconsin, to adopt a dam failure analysis for the Monches Mill Pond dam and rezone lands within the hydraulic shadow of the dam failure from various districts to the C-1 Conservancy District (Town and County) and establish upland zoning designations for lands that are no longer within the regulated floodplain (Town), 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-1729.

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ORDAINED that all ordinances inconsistent with or in contravention of the provisions of this Ordinance are hereby repealed.

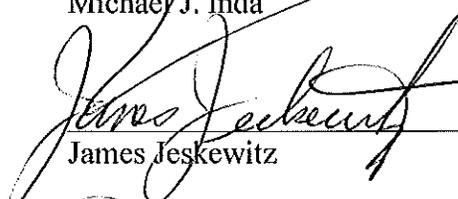
AMEND THE WAUKESHA COUNTY SHORELAND AND FLOODLAND PROTECTION ORDINANCE  
DISTRICT ZONING MAP OF THE TOWN OF MERTON AND THE TOWN OF MERTON ZONING  
ORDINANCE BY REZONING CERTAIN LANDS LOCATED IN SECTIONS 3, 10, AND 15, T8N, R18E,  
TOWN OF MERTON, WAUKESHA COUNTY, WISCONSIN, TO ADOPT A DAM FAILURE ANALYSIS FOR  
THE MONCHES MILL POND DAM AND REZONE LANDS WITHIN THE HYDRAULIC SHADOW OF THE  
DAM FAILURE FROM VARIOUS DISTRICTS TO THE C-1 CONSERVANCY DISTRICT (TOWN AND  
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WITHIN THE REGULATED FLOODPLAIN (TOWN)  
(SZT-1729)

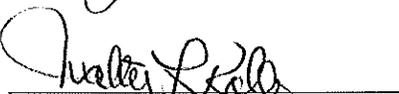
Presented by:  
Land Use, Parks, and Environment Committee

  
Fritz Ruf, Chair

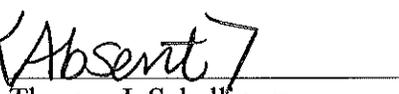
  
Robert Hutton

  
Michael J. Inda

  
James Jeskewitz

  
Walter L. Kolb

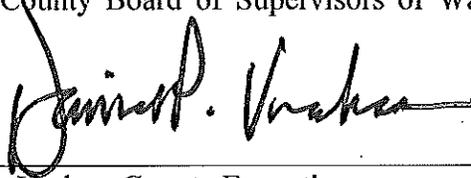
  
Ted Rolfs

  
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: 4/3/12,   
Kathy Nickolaus, County Clerk

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

Approved: X  
Vetoed: \_\_\_\_\_  
Date: 4-5-12,   
Daniel P. Vrakas, County Executive

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-03/27/12

(ORD) NUMBER-1660107

1 D. FALSTAD.....AYE  
 3 R. HUTTON.....  
 5 J. JESKEWITZ.....AYE  
 7 P. HAUKOHL.....  
 9 J. HEINRICH.....AYE  
 11 F. RUF.....AYE  
 13 P. DECKER.....AYE  
 15 P. MEYERS.....AYE  
 17 J. TORTOMASI.....AYE  
 19 S. WIMMER.....AYE  
 21 W. ZABOROWSKI.....AYE  
 23 D. DRAEGER.....AYE  
 25 G. YERKE.....AYE

2 T. ROLFS.....  
 4 J. DWYER.....AYE  
 6 J. BRANDTJEN.....  
 8 T. SCHELLINGER....AYE  
 10 D. SWAN.....AYE  
 12 P. WOLFF.....AYE  
 14 M. INDA.....AYE  
 16 D. PAULSON.....  
 18 K. CUMMINGS.....AYE  
 20 P. JASKE.....AYE  
 22 P. GUNDRUM.....AYE  
 24 W. KOLB.....AYE

TOTAL AYES-20

TOTAL NAYS-00

CARRIED X

DEFEATED \_\_\_\_\_

UNANIMOUS X

TOTAL VOTES-20

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

**FILE NO.:** SZT-1729 and SZ-1729

**DATE:** March 1, 2012

**PETITIONER:** Waukesha County Department of Public Works  
515 W. Moreland Blvd., AC Room 220  
Waukesha, WI 53188

**LOCATION:**  
Parts of Sections 3, 10, and 15, T8N, R18E, Town of Merton. More specifically, the new C-1 Conservancy boundary will be modified along the Oconomowoc River between C.T.H. "E" and Funks Dam.

**PROPOSED ZONING:**

Amend the text and maps of the Waukesha County Shoreland and Floodland Protection Ordinance in order to adopt the Dam Failure Analysis for the Monches Dam in accordance with NR 116 of the Wisconsin Administrative Code. The Dam Failure Analysis results in a new floodplain boundary along the Oconomowoc River between C.T.H. "E" and Funks Dam. Lands will be rezoned from the A-2 Rural Home, A-E Exclusive Agricultural Conservancy, and P-I Public and Institutional Districts to the C-1 Conservancy District on the Waukesha County zoning maps. Since the County's Shoreland jurisdictional limits extend to the full extent of the floodplain limits, if further than 300 ft. from a stream or 1,000 ft. from a lake, additional shoreland jurisdiction will be created. Lands will be rezoned from the A-1 Agricultural, A-2 Rural Home, and the P-1 Public Districts to the C-1 Conservancy District and from the C-1 Conservancy District to the A-1 Agricultural, R-1 Residential and P-1 Public Districts on the Town of Merton zoning maps in order to incorporate the new flood study.

**PUBLIC HEARING DATE:**  
February 14, 2012.

**PUBLIC REACTION:**

One neighbor thought that the new floodplain boundary would affect his recent Letter of Map Amendment received by FEMA, which removed his structures from the floodplain for insurance purposes (*FEMA does not acknowledge dam failure study boundaries. Therefore, the existing FEMA boundary and associated elevations will remain in effect for flood insurance purposes*). He was also concerned that his septic system is located within the new floodplain boundary. Another neighbor asked if insurance is required for a dam (*It is not required by the Wisconsin Department of Natural Resources (WDNR), but some dam owners find it desirable*). Another neighbor stated that it has flooded beyond the boundaries shown on the dam failure maps in the past (*Michelle Hase with the WDNR stated that the existing dam does not have the capacity to carry a large flood event and the new dam will have a lot more capacity to carry a flood downstream. She also stated that a flood event can take place that exceeds regulatory boundaries*).

**TOWN OF MERTON PLAN COMMISSION ACTION:**

On February 14, 2012, the Town of Merton Plan Commission recommended approval to the Town Board and Waukesha County to amend the text and zoning maps of the Waukesha County Shoreland and Floodland Protection Ordinance to adopt the Dam Failure Analysis for the Monches Dam and create a new

C-1 Conservancy District boundary along the banks of the Oconomowoc River downstream of C.T.H. "E". On February 14, 2012, the Town Plan Commission also recommended approval to the Town Board that the Town adopt the Dam Failure Analysis for the Monches Dam and amend the Town's zoning maps to create a new C-1 Conservancy District boundary along the banks of the Oconomowoc River downstream of C.T.H. "E".

**TOWN OF MERTON BOARD ACTION:**

On February 14, 2012, The Town of Merton Board adopted a resolution recommending that Waukesha County amend the text and zoning maps of the Waukesha County Shoreland and Floodland Protection Ordinance to adopt the Dam Failure Analysis for the Monches Dam and create a new C-1 Conservancy District boundary along the banks of the Oconomowoc River downstream of C.T.H. "E" (Exhibit "A").

On February 14, 2012, the Town of Merton Board also adopted an Ordinance amending the Town's C-1 Conservancy District boundary along the banks of the Oconomowoc River downstream of C.T.H. "E" (Exhibit "B").

**COMPLIANCE WITH THE COMPREHENSIVE DEVELOPMENT PLAN FOR WAUKESHA COUNTY AND THE TOWN OF MERTON LAND USE PLAN:**

Prevention of flooding is a key natural resource protection recommendation of both land use plans, and the proposed rezoning will protect the newly studied floodplain from fill and prevent future property damage.

**OTHER CONSIDERATIONS:**

The WDNR inspected the Monches Dam several years ago and required that the County prepare a dam failure analysis so that the WDNR could assume a dam hazard rating according to Wisconsin Administrative Code NR 333. In response, the Waukesha County Department of Public Works retained Hey and Associates to prepare a Dam Failure Analysis for the Monches Dam in 2006. The dam is located within the road right-of-way of C.T.H. "E". The purpose of NR 333 is to ensure that dams are designed, constructed and reconstructed so as to minimize the danger to life, health and property. The Dam Failure Analysis more specifically determines the hydraulic shadow for the failure of the dam, i.e. the area that would flood during a regional flood if the dam failed. A "regional flood" is defined as a flood with a one (1) percent chance of being equaled or exceeded in any given year. In accordance with Wisconsin Administrative Code NR 116, the hydraulic shadow is then required to be regulated as floodway and be placed in the appropriate zoning category as part of the County's floodplain zoning maps. Once the Dam Failure Analysis is approved by the WDNR and floodplain zoning is established, the dam hazard rating can be lowered, if appropriate. There are three (3) dam hazard ratings established by Wisconsin Administrative Code: high hazard, which indicates a potential loss of life if the dam fails; significant hazard, which indicates a potential for structural loss if the dam fails; and low hazard, which indicates that there would only be environmental impacts if the dam fails. Insurance costs are higher and design and maintenance requirements are greater with higher hazard ratings.

As explained in the related Conditional Use Staff Report (SCU-1557), the Waukesha County Department of Public Works is proposing to reconstruct the Monches Dam. The new structure has no effect on the existing Dam Failure Analysis that was approved in 2006 and has since been further amended. However, it is important that the Dam Failure Analysis be adopted and the floodplain maps be amended accordingly because the North Lake Management District would like to take ownership of the dam and they are not

willing to accept ownership until the hazard rating is lowered. The WDNR has agreed that the hazard rating of the dam will be reduced to low hazard provided Waukesha County adopts the analysis and zones the dam failure shadow as floodway.

Several amendments were made to the original Dam Failure Analysis for the Monches Dam. The most recent amendment was prepared in January 2012 and received approval from the WDNR on January 24, 2012. As a result of the analysis and its amendments, the floodplain boundary will be modified along the banks of the Oconomowoc River downstream of the Monches Mill Pond, between C.T.H. "E" and the Funks Dam. The new boundary does not impact any residential structures. However, there is a barn and shed downstream of the dam that will be located within the new floodplain boundary. Otherwise, the area added to the floodplain is largely open land that is otherwise wetland, upland environmental corridor, or used for open space purposes. Waukesha County owns a significant amount of the land affected, as much of the lands constitute Oconomowoc River Greenway Corridor holdings. A map depicting the lands affected is on file in the Department of Parks and Land Use – Planning and Zoning Division office.

Lands will be rezoned from the A-2 Rural Home, A-E Exclusive Agricultural Conservancy District, and P-I Public Institutional Districts to the C-1 Conservancy District on the Waukesha County zoning maps (Exhibit "C"). Since the County's Shoreland jurisdictional limits extend to the floodplain, if further than 300 ft. from a stream or 1,000 ft. from a lake, additional shoreland jurisdiction will be created. The areas that would be inundated with dam failure are required to be regulated as floodway, since flowing floodwater will be discharged downstream as part of a dam failure. Therefore, remodeling and reconstruction to the two (2) accessory structures that will be included in the new boundary will be prohibited in accordance with the C-1 Conservancy District standards of the Waukesha County Shoreland and Floodland Protection Ordinance unless variances are obtained. Lands will be rezoned from the A-1 Agricultural, A-2 Rural Home, and P-1 Public Districts to the C-1 Conservancy District on the Town of Merton zoning maps. Since the Town of Merton's floodplain zoning maps did not previously incorporate the 2008 FEMA floodplain maps, lands will also be removed from the C-1 Conservancy District and match the adjoining upland zoning district categories (Exhibit "D").

It should be noted that the dam failure floodplain boundary will replace the existing FEMA floodplain boundary downstream of the dam, where the dam failure floodplain boundary extends beyond the limits of the FEMA floodplain boundary, in accordance with Wisconsin Administrative Code standards. However, FEMA does not acknowledge the dam failure floodplain boundary. Therefore, the existing FEMA floodplain boundary and associated elevations are still valid for flood insurance purposes.

As required per Wisconsin Administrative Code NR 116, Waukesha County must also add the Dam Failure Analysis to the list of Official Studies identified in Section 6(b)1.B of the Waukesha County Shoreland and Floodland Protection Ordinance. The text on Page 99 of the Ordinance must be revised to read:

**OFFICIAL MAPS: Based on other studies**

Dam Failure Analysis and Proposed Dam Capacity Analysis-Monches Dam, Hey and Associates, Inc., April 17, 2006; amended on October 13, 2006 by Hey and Associates, Inc.; further amended on May 17, 2011 by the Waukesha County Department of Public Works; and further amended by R.A. Smith National on January 19, 2012. Approved by the WDNR on January 24, 2012 and adopted by the Waukesha County Board on March 27, 2012.

**STAFF RECOMMENDATION:**

It is the opinion of the Planning and Zoning Division Staff that this request be approved. Because adoption of the dam failure study is required by the WDNR under NR 116 of the Wisconsin Administrative Code, adoption of the flood study by text reference and incorporation of the floodplain boundaries into the Waukesha County Shoreland and Floodland Protection Ordinance brings the proposed County project into compliance with state standards and provides the public with the most current and accurate information. Amending the Town of Merton zoning boundaries accordingly allows the Town and County to remain consistent with regards to mapped floodplain boundaries. Rezoning the dam failure shadow as floodplain on the Town and County zoning maps prevents development within said areas, which ultimately protects the downstream property owners and their improvements.

Respectfully submitted,

*Amy Barrows*

Amy Barrows  
Senior Land Use Specialist

Enclosures: Exhibit "A" through "D" – SZT-1729 Only

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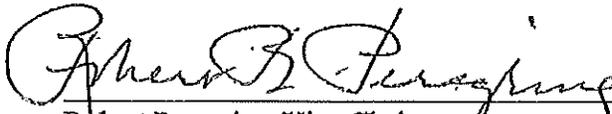
COMMISSION ACTION

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 and the Town of Merton Zoning Code hereby recommends approval of (SZ-1729 Waukesha County Dept. of Public Works) in accordance with the attached "Staff Report and Recommendation".

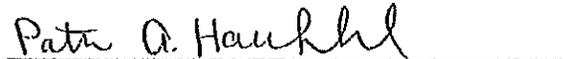
PARK AND PLANNING COMMISSION

March 1, 2012

  
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Gary Goodchild, Chairperson

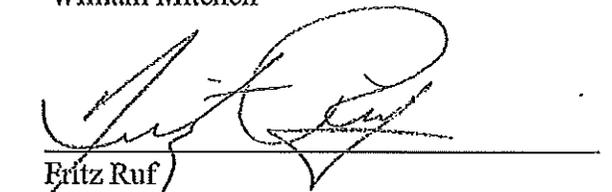
  
\_\_\_\_\_  
Robert Peregrine, Vice Chairperson

ABSENT  
\_\_\_\_\_  
Walter Kolb

  
\_\_\_\_\_  
Patricia Haukohl

(Absent)  
\_\_\_\_\_  
James Siepmann

  
\_\_\_\_\_  
William Mitchell

  
\_\_\_\_\_  
Fritz Ruf