Board of Appeals Meeting Agenda

Town of Holland
Sheboygan County, Wisconsin

Date: Wednesday, December 4, 2024
Time: 7:00pm
Place: Holland Town Hall, W3005 County Road G, Cedar Grove WI 53013

1. Call to order.
2. Pledge of Allegiance.
3. Clerk to certify that notice requirements and the requirements of the Wisconsin Open Meetings law have been met.
4. Clerk to take roll call and confirm whether a quorum is present.
5. Adopt agenda as official order of business.
6. Chair Announcement of Proceedings.
7. Public input (Comments may be limited to 3 minutes per person).
8. Hearing of Board of Appeals:
    a. A request by Michael B Everett to vary the applicable sign regulations. The request is to construct a sign with a height of 100 feet and an area of 697.5 square feet at N905 Sauk Trail Road, Cedar Grove, WI 53013:
        (1) Motion to open hearing.
        (2) Chair announces the request.
        (3) Board of Appeals members report on any site inspection.
        (4) Applicant/owner will present request to the Board of Appeals.
            i. Questions from Board of Appeals members.
        (5) The Town Building Inspector presents report.
        (6) Clerk to report on any related correspondence.
        (7) Chair to request statement(s) from the public.
        (8) Board of Appeals members to disclose any ex parte communications.
        (9) The applicant/owner will present any rebuttal.
            i. Questions from Board of Appeals members.
        (10) Board of Appeals members ask any final questions.
        (11) Confirm documents have been received into the record.
        (12) Motion to close the record and the hearing.
9. Deliberation and decision on the above request by Michael B Everett:

a. Findings of fact (based on ordinance jurisdiction and standards, Board of Appeals members use Request Documentation Form):
    (1) Determine whether the board has the authority to make a decision.
    (2) Determine whether the application contains the information necessary to make a decision.
    (3) Record pertinent facts from the record/hearing on the decision form.
b. Conclusions of law
    (1) Specify applicable legal standards.
    (2) Determine which facts relate to the legal standards.
    (3) Determine whether the legal standards are met (agree on any conditions).
c. Order and Determination.

10. Hearing of Board of Appeals:

a. A Second Amended Application by Atty. Ellen Anderson on behalf of David Valenti and Larry Britton appealing the Town Plan Commission's adoption of the Town Attorney's interpretation of zoning regulations. The Application requests a review of the legal interpretation that the proposed use of the dwelling at N2047 Pine Beach Road South, Oostburg, Wisconsin complies with Holland Town Code §330-27, R-1 Single-Family Residence District:

    (1) Motion to open hearing.

    (2) Chair announces the request.

    (3) Board of Appeals members report on any site inspection.

    (4) Applicant will present request to the Board of Appeals.

        i. Questions from Board of Appeals members.

    (5) Property owner will present justification for their interpretation to the Board of Appeals.

        i. Questions from Board of Appeals members.

    (6) The Town Plan Commission will present justification for its interpretation to the Board of Appeals.

        i. Questions from Board of Appeal members

    (7) Clerk to report on any related correspondence.

    (8) Board of Appeals members to disclose any ex parte communications.

    (9) Chair to request statement(s) of witnesses.

    (10) Applicant will present any rebuttal.

        i. Questions from Board of Appeals members.

    (11) Board of Appeals members ask any final questions.

    (12) Confirm documents have been received into the record.

    (13) Motion to close the record and the hearing.

11. Deliberation and decision on the above request by Ellen E. Anderson on behalf of David Valenti and Larry Britton:
    a. Findings of fact (based on ordinance jurisdiction and standards):
        (1) Determine whether the board has the authority to make a decision.
        (2) Determine whether the application contains the information necessary to make a decision.
        (3) Record pertinent facts from the record/hearing on the decision form.
    b. Conclusions of law
        (1) Specify applicable legal standards.
        (2) Determine which facts relate to the legal standards.
        (3) Determine whether the legal standards are met (agree on any conditions).
    c. Order and Determination.
12. Public input (Comments may be limited to 3 minutes per person).
13. Read and approve meeting minutes.
14. Adjourn.

Notice is hereby given that a quorum of the Town of Holland Plan Commission, Town of Holland Board, or any of its committees, may be present at this meeting to gather information about a topic over which they have decision-making authority.

James H Wonser, Chairman

Agenda posted by Clerk Janelle Kaiser in the following locations:

- Holland Town Hall at W3005 County Road G, Cedar Grove, WI 53013
- Town website at www.townofholland.com

Any person wishing to attend the meeting requiring accommodation due to a disability should contact the Town office by phone at (920) 668-6625 or by email at clerk-treasurer@hollandwi.gov at least 72 hours prior to the meeting.

Board of Appeals Applications shall be submitted to the Town Clerk, W3005 County Road G, Cedar Grove, WI 53013. A completed Board of Appeals Application and related fee of $750.00 must be submitted, along with any supporting documents. The chairman of the Board of Appeals shall review the application and schedule a Board of Appeals meeting if appropriate.

A Board of Appeals Application along with one full size hard copy and one (1) electronic copy (PDF file) of all certified survey maps, plats, construction drawings, and similar materials shall be submitted to the Clerk. The review process and time frame begin upon the Towu's receipt of a complete submittal, as determined by the Town Board of Appeals, that includes the application and all related materials.

All questions, comments, and concerns shall be directed to the Town Clerk-Treasurer at 920-668-6625 or clerk-treasurer@townofholland.com.

1. **Applicant / Agent Information:**

Ellen E. Anderson o/b/o Messrs. David Valenti and Larry Britton
(Name)

411 E. Wisconsin Ave., Suite 2400 | Milwaukee | WI | 53202
(Street) | *(City)* | *(State)* | *(Zip)*

(414) 277-5241 | 414- 978-8304 | ellen.anderson@quarles.com
(Phone) | *(Fax)* | *(Email)*

2. **Property Information #1:**

N2047 Pine Beach Road South | Oostburg | WI | 53070
(Street) | *(City)* | *(State)* | *(Zip)*

59006078811 | 0.83
(Taxkey #) | *(Acreage)*

Property Information #2:

(Street) | *(City)* | *(State)* | *(Zip)*

(Taxkey #) | *(Acreage)*

Property Information #3:

(Street) | *(City)* | *(State)* | *(Zip)*

(Taxkey #) | *(Acreage)*

3. **Application Request & Fees:**

Fees associated with all Board of Appeals Applications are identified in the Town of Holland Fee Schedule. All payments are to be made out to: "Town of Holland". This application fee only covers the cost of the meeting, including notice publication. The review process and time frame begin upon the Town's receipt of a complete submittal, as determined by the Board of Appeals.

4. **Resource Information:**

Applicants should review any related sections of the Town of Holland Code of Ordinances prior to submitting a Board of Appeals Application.

5. **Professional Services Reimbursement Notice:**

Pursuant to the Town of Holland Code of Ordinances, whenever the services of the Town Attorney, Town Engineer, Town Planner, or any other Town professional staff results in fees specific to this application, the Town shall charge the applicant for the fees incurred. Also, be advised that certain other fees, costs, and charges are the responsibility of the property owner or responsible party.

I, the undersigned, have been advised that, pursuant to the Town of Holland Code of Ordinances, if the Town Attorney, Town Engineer, Town Planner, or any other Town professional provides services to the Town because of my activities, whether at my request or at the request of the Town, I shall be responsible for the fees incurred by the Town. In addition, I have been advised that pursuant to the Town of Holland Code of Ordinances, certain other fees, costs, and charges are my responsibility.

I/We the undersigned, being owner(s) of all the area described, hereby petition for (check all that apply):

Variances: Applications for variances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of the Town Zoning shall be observed and the public safety, welfare, and justice secured. Use variances shall not be granted. In every case where a variance from these regulations has been granted by the Board of Appeals, the minutes of the Board shall affirmatively show that a practical difficulty or unnecessary hardship exists and the records of the Board shall clearly show in what particular and specific respects a practical difficulty or an unnecessary hardship is created.

☐ ***Variance: To vary the applicable lot size requirements, including lot area, lot width, and density requirements.***

☐ ***Variance: To vary the applicable building bulk limitations, including height, lot coverage, floor area ratio, and yard requirements.***

☐ ***Variance: To vary the applicable off-street parking and off-street loading requirements.***

☐ ***Variance: To vary the applicable sign regulations.***

☐ ***Variance: To vary the regulations and restrictions applicable to nonconformities.***

Errors: Appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Building Inspector.

☐ ***Error.***

Substitutions: Applications for substitution of more restrictive nonconforming uses for existing nonconforming uses, provided that no structural alterations are to be made and the Town Plan Commission has made a review and recommendation. Whenever the Board of Appeals permits such a substitution, the use may not thereafter be changed without application.

☐ ***Substitution.***

Interpretations: Applications for interpretations of the zoning regulations and interpretations of the location of the boundaries of the zoning districts, after the Town Plan Commission has made a review and recommendation.

☒ ***Interpretation.***

If you are uncertain about what boxes to check, review the Town Code including sections 330-96 and 330-99 related to the Board of Appeals.

Applicant / Agent Signature

Ellen E. Anderson
(Name)

/s/ Electronically signed by Ellen E. Anderson [redacted] October 31, 2024
(Signature) *(Date)*

Property Owner Information #1

(Name)

(Street) *(City)* *(State)* *(Zip)*

(Phone) *(Fax)* *(Email)*

(Signature) *(Date)*

Property Owner Information #2

(Name)

(Street) *(City)* *(State)* *(Zip)*

(Phone) *(Fax)* *(Email)*

(Signature) *(Date)*

Note: If more than two property owners attach additional copies of this page.

Town Staff Use Only			
Date	**Amount Due**	**Check #**	**Received By**
10/17/2024	$750.00	932126	Janelle Kaiser

The purpose of this request is as follows:

To review the Town Board's erroneous interpretation that the subject property complies with R-1, single-family residential zoning. On October 14, 2024, the Town Board's attorney provided a legal opinion which recommended that the subject property's use comports with the Town's R-1, single-family residential zoning code. The Town Board adopted that opinion and recommendation during the meeting, thereby interpreting the R-1, single family residential zoning code to include the subject property. The Board of Appeals must review the Town's erroneous interpretation and decide instead that the subject property does not comply with R-1, single family residential use pursuant to the Town of Holland Code Sec. 330-96(A)(4). The petitioners respectfully request an immediate hearing on this issue.

Description of proposed operation or use (a statement of the type, extent, area, etc., of any development project):

The subject property will be used commercially as a marketing tool for American Orthodontics to solicit, recruit, and retain customers and employees. It is a corporate retreat where as many as 18 unrelated individuals may stay for 3-4 days at a time at American Orthodontic's expense. The short-term tenants must sign liability waivers, will earn coupons for redemption in the surrounding area, may receive a tour of the corporate facility, and will answer to a "team" from American Orthodontics should they have issues with their stay.

Comment on the compatibility of proposed use and/or zoning with adjacent lands (a statement of land uses and impact of zoning change):

The proposed use does not comport with R-1 zoning. R-1 zoning only allows for a "single-family dwelling:" occupancy exclusively by one family who must live in the residence for some time. The American Orthodontics property is not a single-family dwelling because it will not be used for a single family who lives together. In fact, it will not be used by a family of any kind. And it will be used for short-term stays, not for permanent living.

List all properties adjacent, abutting, or lying within 300 feet of the subject property (names and mailing addresses of neighboring owners of vacant land and built-upon land):

Hoffins 2012 Revocable Trust, N2051 Pine Beach Road S., Oostburg, WI 53070
Thomas M. Gazzana, N2059 Pine Beach Road S., Oostburg, WI 53070
The Kathryn Potos Revocable Trust, N2065 Pine Beach Road S., Oostburg, WI 53070
Daniel R. Stokdyk, W1199 Stokdyk Ingelse Road, Oostburg, WI 53070
Gregory H. & Ann L. Bachrach, N2040 Pine Beach Road S., Oostburg, WI 53070
(SEE ATTACHED SHEET FOR ADDITIONAL NAMES)

Has a previous petition been filed? ☒ YES ☐ NO If so, when: October 17 and 18, 2024

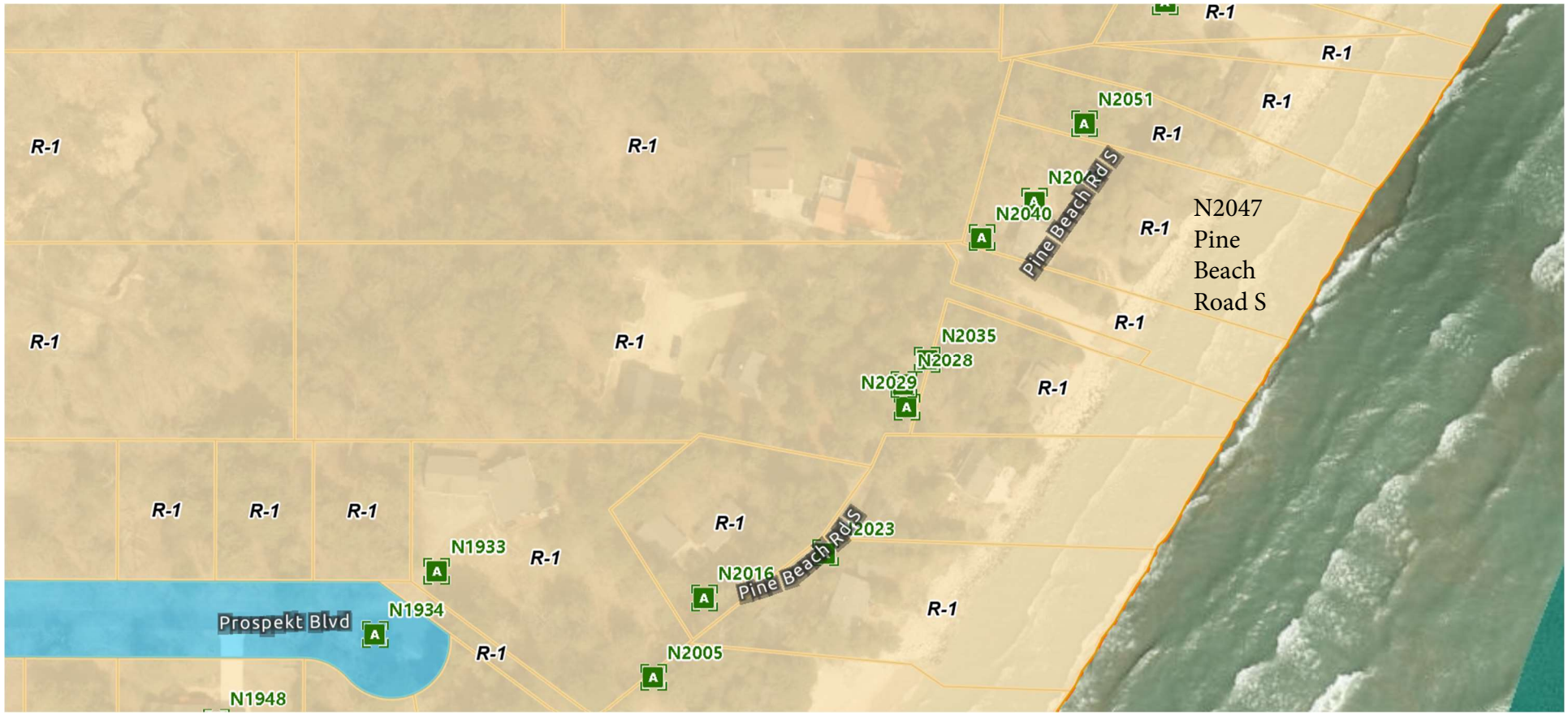
Continuation of "List of all properties adjacent, abutting, or lying within 300 feet of the subject property (names and mailing addresses of neighboring owners of vacant land and built-upon land):

John P. & Marilee R. Dickman 2017 Revocable Trust
N2028 Pine Beach Road S.
Oostburg, WI 53070

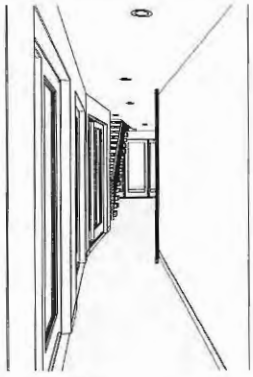
Steven Hubbard Trust
Michele Keller Trust
N2016 Pine Beach Road S.
Oostburg, WI 53070

Jeffrey & Debra Krygiel
N2035 Pine Beach Road S.
Oostburg, WI 53070

Christina Barbeyto
Michael Opland
N2029 Pine Beach Road S.
Oostburg, WI 53070



N2047 PINE BEACH ROAD SOUTH – BOARD OF APPEALS APPLICATION 12/4/2024
LOCATION MAP SHOWING ZONING OF SUBJECT AND SURROUNDING PROPERTIES
PREPARED BY CLERK JANELLE KAISER



4 BREEZEWAY LOOKING WEST

3 LIVING ROOM LOOKING NORTHWEST

2 KITCHEN LOOKING SOUTHEAST

2 WALL TYPES
3/4" = 1'-0"

MATERIAL SELECTIONS AND SPECIFICATIONS

1 PROPOSED LAKE SIDE PERSPECTIVE
N.T.S.

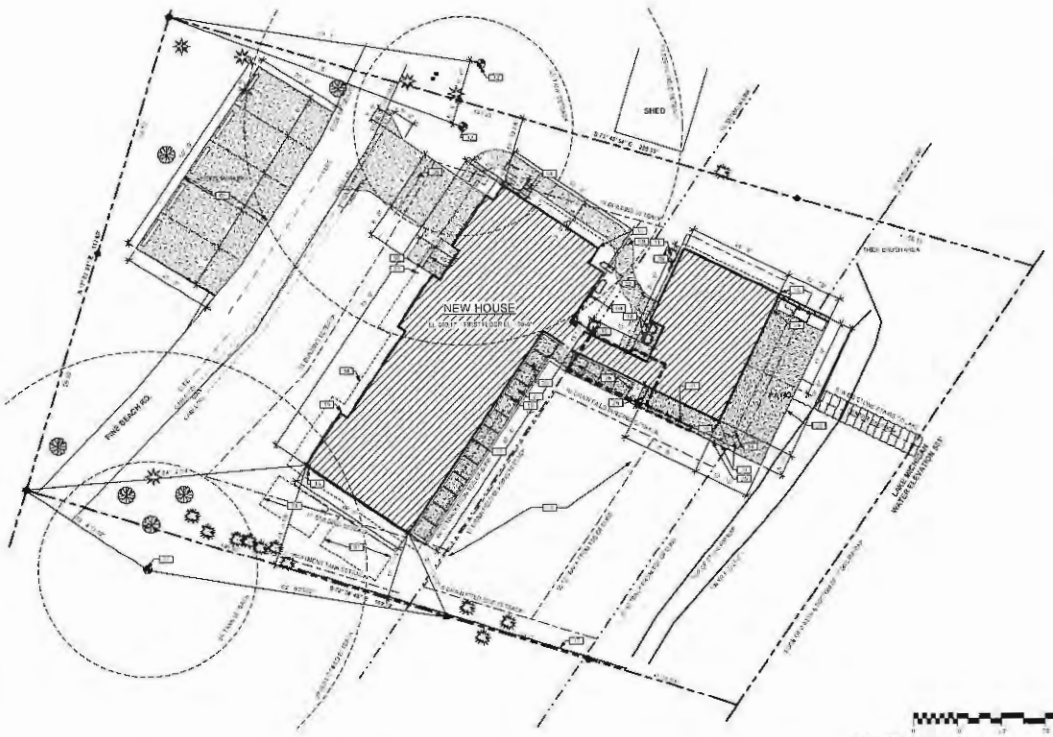
FOR CONSTRUCTION

NO	REVISIONS	DATE
1	REVISION 1	10/16/23
2	REVISIONS	05/16/24
3		
4		
5		

LEGACY architecture
605 E. Main Street, Suite 101
Sheboygan, Wisconsin 53081
(920) 783-2000
www.legacyarchitecture.com

SHORELINE AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER	22.04*
DRAWN BY	JL WILNOT
CHECKED BY	JL LEHRKE
DATE	09/10/23
SHEET TITLE	WALL TYPES, MATERIALS, AND 3D PERSPECTIVES
SHEET NUMBER	G0.02



SITE PLAN
1" = 10'-0"

ZONING ORDINANCE

ZONING CLASSIFICATION	R-4 SINGLE-FAMILY - RESIDENCE	
LOT	CODE	ON SITE
LOT AREA (SQUARE FEET)	21,000 sq. ft.	21,000 sq. ft.
LOT AREA (ACRES)	0.48 ACRES	0.48 ACRES
MAXIMUM LOT COVERAGE	50% MAX.	15%
BUILDING		
HEIGHT	35'-0" MAX.	17'-0"
FRONT SETBACK	40'-0" MIN.	N/A
SIDE YARD	8'-0" MIN.	10'-0" / 10'-0" COMBINED
REAR YARD	25'-0" MIN.	25'-0" (WATER SIDE)

IMPERVIOUS AREA CALCULATION

AREA DRAINING TOWARDS LAKE	14.7%

UTILITY NOTES

SITE PLAN NOTES

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NO	REVISIONS	DATE
1	REVISION 1	10.19.21

LEGACY architecture
635 Lion Avenue Suite 101
Sheboygan, Wisconsin 53081
(920) 452-4500
www.legacyarchitecture.com

FOR CONSTRUCTION

SHORELINE
AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER	21.017
DRAWN BY	Z. WILKIS
CHECKED BY	J. LEHTINE
DATE	09/16/21
SHEET TITLE	SITE PLAN
SHEET NUMBER	C1.02

LANDSCAPE PLANT SCHEDULE

KEY	BOTANICAL NAME	COMMON NAME	QTY	SIZE	O.C.	MATURE HT	MATURE WID	FOLIAGE TYPE	FLOWER TYPE	FALL COLOR
A	Cladrastus kentukea (tinctoria)	Yellowwood	6	2"	B&B	45'	15'	Broad, alternate		Insignificant yellow
B	Cornus alternifolia	Pagoda Dogwood	5	8'	B&B	25	25'	Alternate, simple	Flat-topped, white, fragrant flowers in June	Maroon to purple
C	Hydrangea arborescens 'Bella Anna'	Smooth Hydrangea	4	4'	Cont.	4'	4'	Opposite, simple	Showy, white	Yellow
D	Physocarpus opulifolius 'Diabolo'	Diablo Ninebark	5	4'	B&B	10'	10'	Alternate, simple	Showy, white	Brown / yellow
E	Rosa x 'Knock Out'	Knock Out Rose	10	18"	#3	3'	3'	Alternate, simple	Showy, red	Green
F	Hydrangea p. 'Limelight'	Limelight Hydrangea	3	3'	Cont.	6'	6'	Opposite, simple	Showy, white	Yellow
G	Hydrangea p. 'Little Lime'	Little Lime Hydrangea	30	18"	Cont.	3'	2.5'	Opposite, simple	Showy, white	Yellow

PERENNIAL PLANT SCHEDULE

KEY	BOTANICAL NAME	COMMON NAME	QTY	SIZE	FLOWER COLOR	TIME OF BLOOM	MATURE HEIGHT	SPACING
1	Calamagrostis acutiflora 'Karl Foerster'	Karl Foerster Grass	9	gal	brown	A-S	5'	24"
2	Asclepias tuberosa	Butterfly Flower	25	gal	orange	LA-SU	18"	18"
3	Agastache rupestrus	Blue Wave Hyssop	9	gal	blue	LA-A	24"	18"
4	Aster Dumosus 'Wood's Blue'	Wood's Blue Aster	19	gal	blue	A-SE	12-15"	9"
5	Echinacea p. 'Magnus Superior'	Magnus Superior Purple Coneflower	28	gal	dark purple	LA-S	24"	15"
6	Geranium x 'Rozanne'	Rozanne Geranium	7	gal	magenta	LJ-A-S	18"	18"
7	Hemerocallis 'Stella de Oro'	Stella de Oro Daylily	7	gal	pale lemon	LA	12-16"	18"
8	Hemerocallis 'Guardian Angel'	Guardian Angel Daylily	8	gal	lavender pink	LA	18"	24"
9	Iris S. 'Sultan's Palace'	Sultan's Palace Iris	12	gal	dark blue with yellow beard	June	36"	12"
10	Liatris spicata 'Kobold'	Kobold Blazing Star	23	gal	yellow	A-S	42"	18"
11	Rudbeckia fulgida 'Goldsturm'	Goldsturm Black-eyed Susan	15	gal	yellow	LA-S	36"	18"
12	Salvia nemorosa 'May Night'	May Night Salvia	19	gal	blue	LJ	18-24"	18"

Landscape Plan Notes

1. Keel Electric all dimensions, elevations and grades in the field.
2. Locate all public and private utilities before installing the landscape.
3. Mulch to be hand shredded, dark natural color bark installed 4" thick in all planting beds. Do not use colored mulch or chipped mulch.
4. All mulch beds and individual trees to have a natural cut edge.
5. All area disturbed to be seeded with turf seed except areas to be planted and mulched.
6. Install plants of the correct elevation and according to the specifications.
7. Weed infested turf should be planted at 5-7lbs per 1000 SQ FT. Grass seed mix with chopped straw where slope. Avoid Rye Grass.
8. When using new chemicals, herbicides, insecticides, or fungicides follow the manufacturers' recommendations for application.
9. See landscape schedule for the trees, and shrubs to be installed.

TURF SEED SPECIFICATION

1. Turf shall continue in all areas of the Area of Influence.
2. Seed shall be specified according to the U.S. Department of Agriculture Federal Seed Act and shall be labeled to its pure seed, germination, weed content, and percentage of crop and other seed and inert matter as required by law.
3. Each variety to be furnished in separate containers and shall bear the seed tag showing the above information.
4. The seed shall be mixed in the following proportions:
   - 40% Kentucky Bluegrass
   - 40% Perennial Ryegrass
   - 20% Fescue
5. Seeding is acceptable at a time of year but shall be done at the rate of 5 lbs per 1000 sq. ft.
6. Fertilizer shall be applied at the rate of 20 lbs per 1000 sq. ft.
7. Mulch shall be applied at the rate of 1 ton per acre.
8. Watering shall be done as necessary to maintain adequate moisture for germination and growth.
9. Weeding shall be done as necessary to maintain a healthy stand of grass.
10. Mowing shall be done as necessary to maintain a height of 2" to 3".

PLANTING SPECIFICATION

SCOPE OF WORK

A. The Landscape Contractor shall provide all materials, labor and equipment to complete all landscape work as shown on the plans and specifications.

B. The total number of plants and the area to be landscaped shall be as shown on the plans. The Landscape Contractor shall verify the total number of each plant with the Contract price. The Owner shall calculate on this bid will immediately become part of the Contract Documents. NOTE: If the Contractor finds discrepancies in the Plant Schedule, he/she should immediately check the plant schedule's quantities with the symbols shown on the plan. In case the plant count is correct or both the plan and the plant schedule is wrong, the Contractor shall be bound to install the area shown or shall be paid (pro-rata) for the Landscape Architect.

STANDARDS

A. All plant material will conform to the current issue of the American Standard for Nursery Stock, published by the American Association of Landscape Nurserymen (AAN Inc.).

B. Plant materials to be planted shall be healthy, free from insect and disease, and certified by State Plant Inspection.

C. Cultivated material must be true to kind, and when approved by Owner's representative.

D. Trees shown will be in accordance with Florida Grades No. 1 or better.

SUBSTITUTES

A. Will be rejected by the Owner as unless representative by written of all material used shall have been submitted to and Owner's designated representative for approval.

APPROVALS

A. All approvals will be in writing.

UTILITIES AND UNDERGROUND FEATURES

A. The Landscape Contractor shall notify utility companies and/or Digger's Corporation to call out and locate/mark all buried utilities (Wisconsin Digger's Hotline: 1-800-242-8511).

B. Tree, lighting and other garden activities, including, with TV communication lines, etc. shall be located by the Owner or General Contractor.

C. Workers, or installers shall not be without and the planting. No Landscape Architect shall be responsible for any existing plants prior to the planting process. Any and all loss of existing plant planting shall be borne by the Owner.

D. Underground lines and existing trees are difficult to locate by simply visual inspection. Check drains, sewers, irrigation pipe, fencing, landscape lighting, and existing buried cables and electrical primary facilities before by the Owner or General Contractor.

WATER

A. The Owner shall supply water at one or more of the Landscape Contractor has to supply water in the site. There will not be at an additional cost.

WARRANTY

A. The Landscape Contractor shall warrant all trees, shrubs, ornamental grasses, perennials and ground cover plants for a period of one (1) year from the date of substantial completion of the entire project. The Landscape Contractor shall be responsible for providing adequate maintenance during this warranty period.

B. Any material that is 25% dead or more shall be considered dead and must be promptly removed and replaced. A new warranty period of one (1) year shall begin on the date of replacement.

C. The Landscape Contractor shall not be responsible for damage caused by fire, lightning, floods, freezing, vandalism, or other conditions beyond the control of the Landscape Contractor.

D. The Landscape Contractor shall be responsible for the health and vigor of all plant materials during the warranty period. This includes watering, fertilizing, pruning, mulching, and other maintenance activities as necessary to ensure the plants remain in good condition.

E. The Landscape Contractor shall be responsible for removing and disposing of dead plant materials promptly. Dead plants shall be removed and replaced as soon as practicable, but no later than the next planting season.

F. The Landscape Contractor shall not be responsible for damage caused by improper maintenance by the Owner or others after the warranty period has expired.

PLANT FERTILIZER

A. Slow release fertilizer shall be applied as per the manufacturer's instructions. The amount and type of fertilizer shall be determined by a soil test, if required, or as recommended by the Landscape Architect.

MULCH

A. Organic material including shredded hardwood bark and ground wood bark shall be spread to a depth of 3" (min.).

B. Organic material shall be free of stones, sticks, roots, or other objectionable material.

C. Organic material is to be spread around all trees and shrubs.

1. Trees: Tie the 4th ground (brown) closest to the first 1" out from the trunk and spread 3-4" deep.
2. Shrubs: The mulch around the shrubs should be installed 2" out from the trunk and spread 3-4" deep.

ZONING ORDINANCE

ZONING CLASSIFICATION:	R-1 SINGLE FAMILY RESIDENCE	
LOT:	CODE	DESIGN
AREA (UNDEVIDED)	20,000 SF MIN	± 31,582 SF
WIDTH (UNDEVIDED)	100 FT MIN	112.5 FT
IMPERVIOUS COVERAGE	30% MAX	25% (7,559 SF)
STRUCTURE:		
HEIGHT	35 FT MAX	22 FT
STREET SETBACK	30 FT MIN	N/A
REAR SETBACK	25 FT MIN	
SIDE SETBACK	15 FT MIN	15 FT (FOUNDATION)
SUM (MIN. OF 40%)	75 FT MIN	32 FT (ROOF)

IMPERVIOUS AREA CALCULATION

AREA DRAINING TOWARDS LAKE	± 16,150 SF
AREA DRAINING AWAY	± 31,432 SF
EXCLUDED PROJECT WORKS	
TOTAL IMPERVIOUS AREA	7,559 SF
LOT AREA	± 31,432 SF
AREA DRAINING TOWARDS LAKE	15.7 %

Plan Key

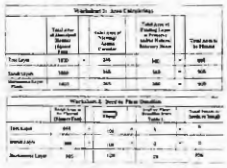
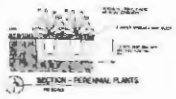


Table 1. Shoreland Habitat Planting Densities

Layer	Minimum Number of Species	Density
Trees	2	0.5 - 1 per 100 sq. ft.
Shrubs	1	1 - 3 per 100 sq. ft. (Clumped, maximize min. 2 feet spacing)
Herbaceous Cover - Plug plugs	3	20 - 75 plugs per 100 sq. ft. (Set much as small bed)



LANDSCAPE PLAN
SCALE: 1" = 10'-0"

FOR CONSTRUCTION

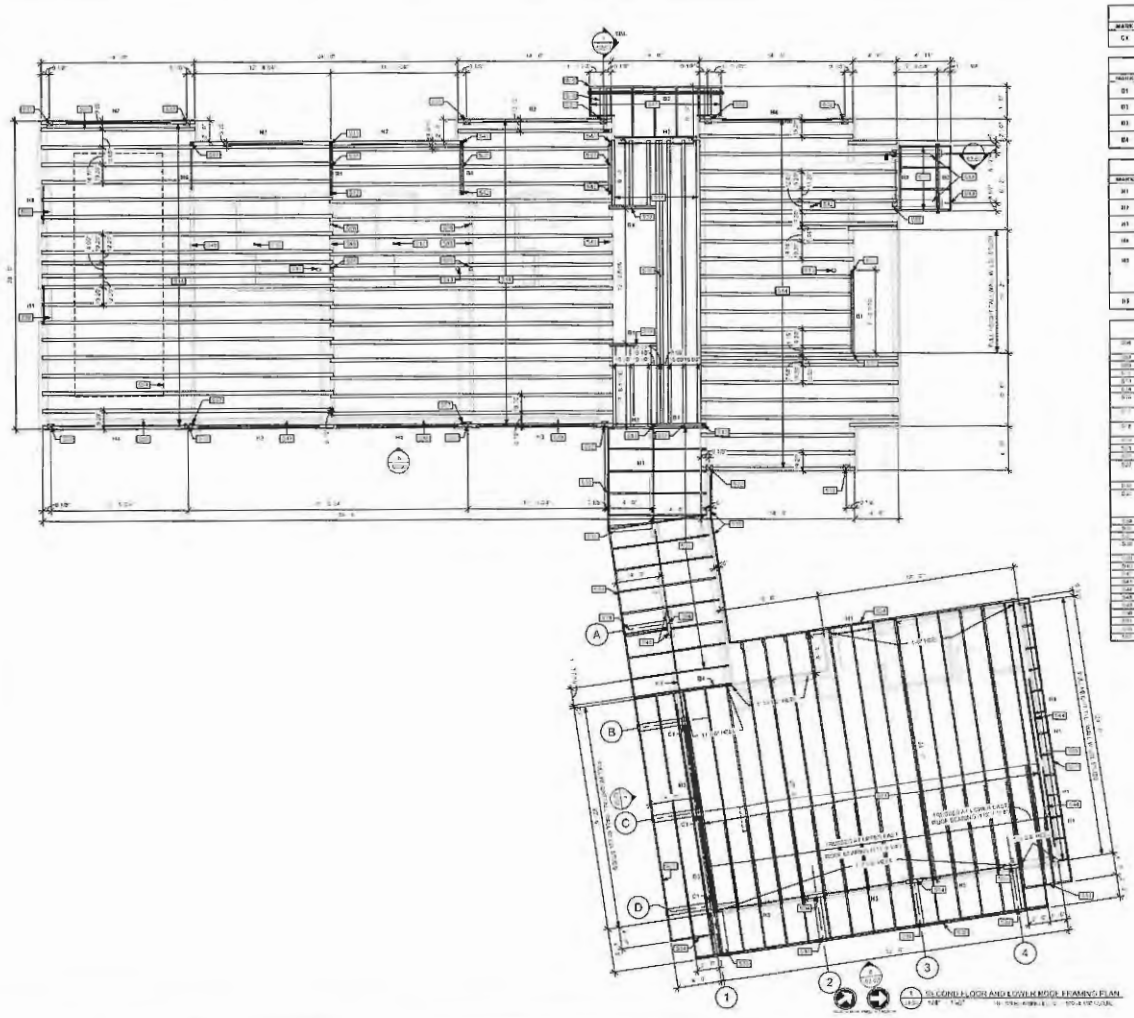
NO	REVISIONS	DATE

LEGACY architecture
Hartland, Wisconsin 53029
(262) 367-4333
www.legacyarchitecture.com

LANDSCAPE ARCHITECT
KELLY LANDSCAPE DESIGN
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

SHORELINE
AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER
22.041
DRAWN BY
J. WENDT
CHECKED BY
J. LEHRKE
DATE
09/1/23
SHEET TITLE
LANDSCAPE
SHEET NUMBER
L0.01



STEEL COLUMN SCHEDULE

MARK	DESCRIPTION	BASE & CAP
C1		

BEAM SCHEDULE

MARK	DESCRIPTION	ID MARK
B1		
B2		
B3		WELDED TYP HSS BEAM
B4		

HEADER SCHEDULE

MARK	DESCRIPTION	NUMBER OF JACK STUDS
H1		
H2		
H3		
H4		
H5		
H6		

STRUCTURAL PLAN NOTES

S1.01	
S1.02	
S1.03	
S1.04	
S1.05	
S1.06	
S1.07	
S1.08	
S1.09	
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S1.48	
S1.49	
S1.50	

NO	REVISIONS	DATE
1	REVISION 1	10/19/21
2	REVISION 2	01/14/21
3		
4	REVISION 4	03/15/22
5		
6		

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FOR CONSTRUCTION

SHORELINE
AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

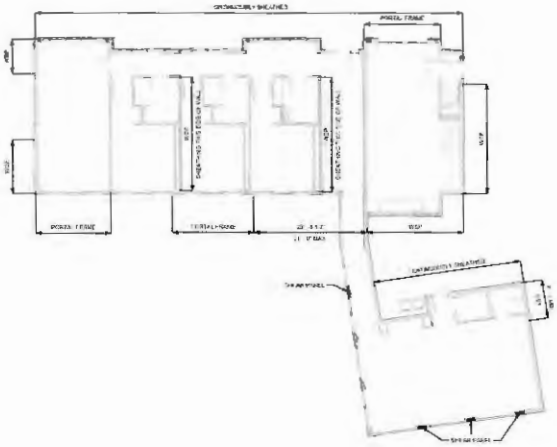
PROJECT NUMBER	20.01*
DRAWN BY	J. WILNDT
CHECKED BY	J. LEHRKE
DATE	09/10/21
SHEET TITLE	SECOND FLOOR AND LOWER ROOF FRAMING PLAN
SHEET NUMBER	**S1.03**

BRACING SCHEDULE

MARK	DESCRIPTION
WSP	7/16" OSB SHEATHING, NAILED AS PER EXTERIOR WALL SCHEDULE WITH 10d COMMON NAILS OR INDUSTRIAL RATED EQUIVALENT AT 6" O.C. AT PERIMETER SPACED AT 12" O.C. ON INTERMEDIATE STUDS
SW1	4' GYP BOARD SHEAR WALL EACH SIDE OF WALL WITH 5/8" TYPE X GYP BOARD ATTACHED WITH 6d COMMON NAILS AT 7" O.C. PANEL EDGE AT THE END FELT LAMINATING 2 POWER HEAD STUD SHOES OR EQUIVALENT AT EACH STUD WITH 2" HEX ANCHORS

- ALL OTHER EXTERIOR WALLS TO BE 7/16" OSB SHEATHING, APA RATED, FASTENED TO FRAMING OR BLOCKING WITH 10d COMMON NAILS OR 8d SPIRAL SHANK LONG A-LAY'R DRIVEN AT SPACED AT 6" O.C. ON EDGES, 12" ON THE FIELD
- SHEATHING SHALL BE APPLIED TO ALL EXTERIOR WALLS SURFACE
- [illegible]
- [illegible]
- [illegible]

SECOND FLOOR BRACING DIAGRAM
1/8" = 1'-0"



FIRST FLOOR BRACING DIAGRAM
1/8" = 1'-0"

FOR CONSTRUCTION

NO	REVISIONS	DATE

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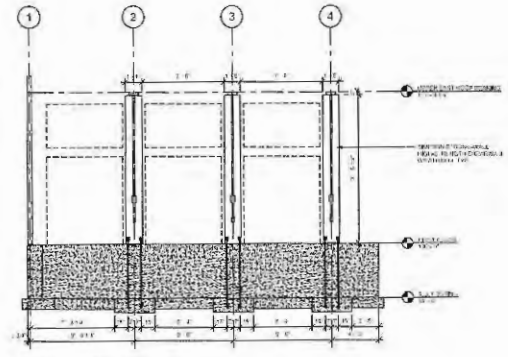
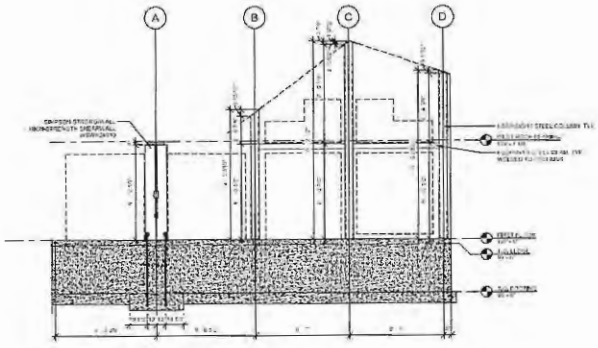
[illegible]

SHORELINE AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

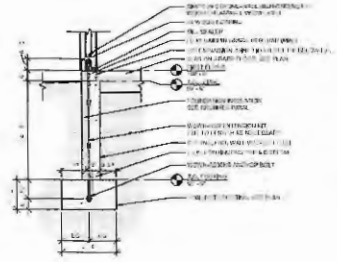
PROJECT NUMBER	22.041
DRAWN BY	J. WENDT
CHECKED BY	J. LICHTKE
DATE	05/18/21
SHEET TITLE	BRACING DIAGRAMS
SHEET NUMBER	S1.05



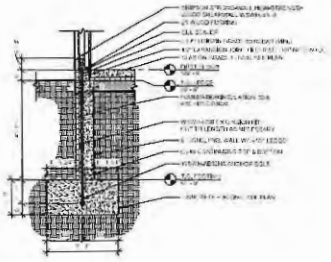
1 GREAT ROOM EAST SHEARWALL ELEVATION
1/4" = 1'-0"



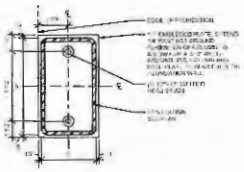
5 GREAT ROOM SOUTH ELEVATION
1/4" = 1'-0"



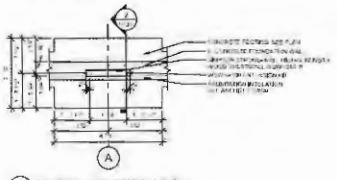
4 SHEARWALL FOUNDATION, TYP. OF 1
1/4" = 1'-0"



2 SHEARWALL FOUNDATION, TYP. OF 1
1/4" = 1'-0"



1 TYP. HOLDDOWN DETAIL
3" = 1'-0"



1 SHEARWALL FOOTING DETAIL - TYP. OF 1
1" = 1'-0"

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NO	REVISIONS	DATE
	SD-SET-1	12/10/21

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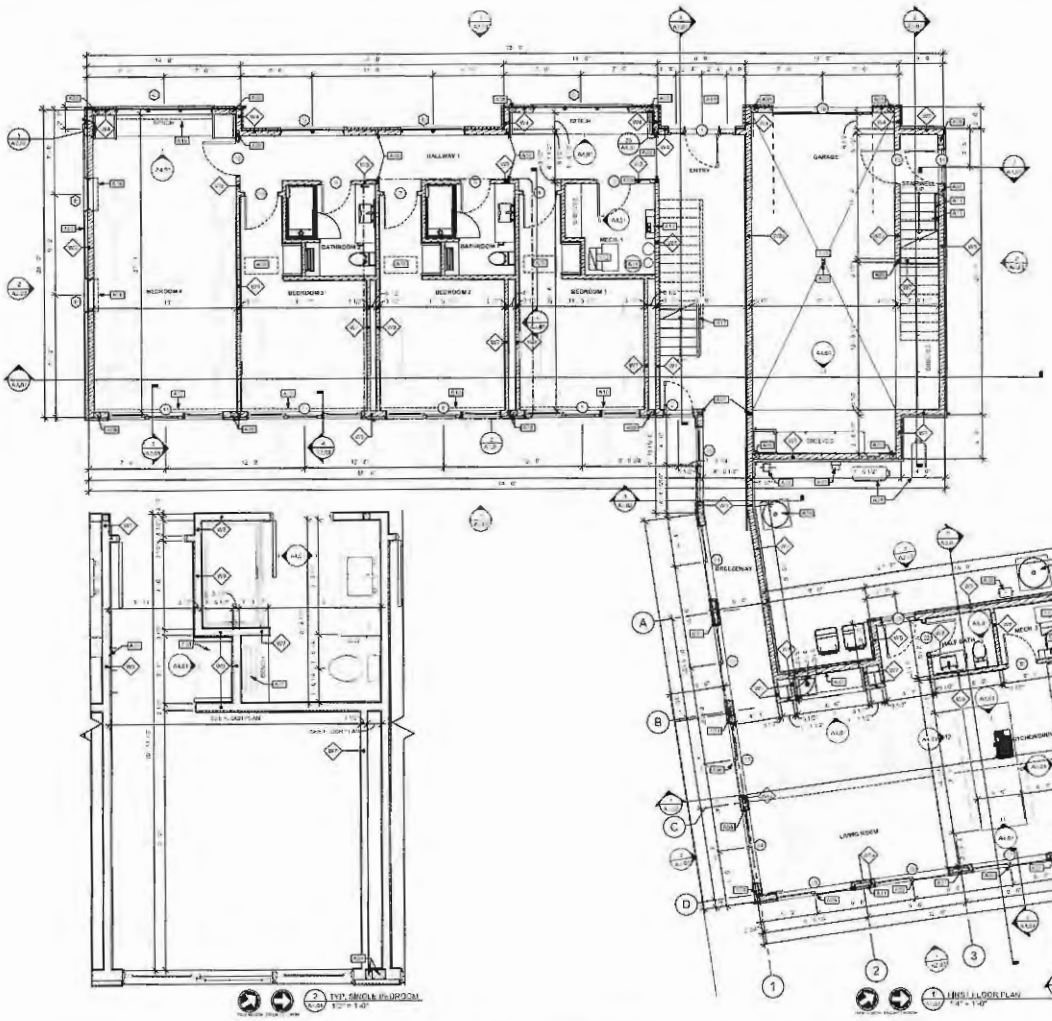
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER	22.041
DRAWN BY	Z. WENDT
CHECKED BY	J. LEHRKE
DATE	12/10/21
SHEET TITLE	STRUCTURAL DETAILS
SHEET NUMBER	S2.02



2 TYP. SINGLE BEDROOM
1/2" = 1'-0"

1 FIRST FLOOR PLAN
1/4" = 1'-0"

GENERAL PLAN NOTES

FLOOR PLAN NOTES

NO	REVISIONS	DATE
1	REVISION 1	11/16/23
2	REVISION 2	01/16/24
3		
4		
5		
6		

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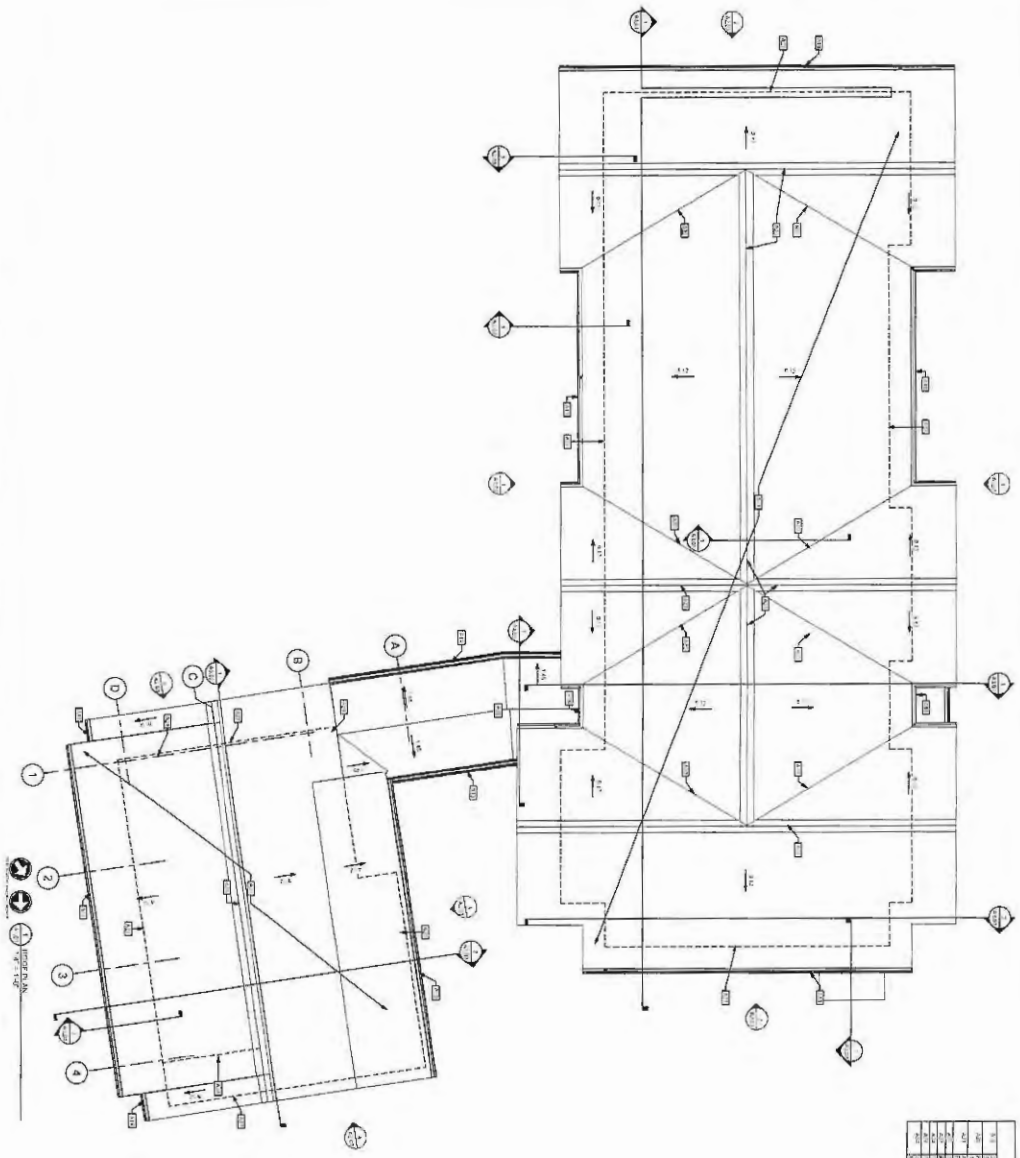
FOR CONSTRUCTION

SHORELINE AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER	22.041
DRAWN BY	J. WILNOT
CHECKED BY	J. LEHRKE
DATE	08/18/23
SHEET TITLE	FIRST FLOOR PLAN
SHEET NUMBER	A1.01



ROOF PLAN NOTES

FOR CONSTRUCTION

SHEET NUMBER	SHEET TITLE	DATE	CHECKED BY	DRAWN BY	PROJECT NUMBER
A1.03	ROOF PLAN	09/16/21	J. LECHNER	J. OSTREM	22121

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N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

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NO	REVISIONS	DATE

FOR CONSTRUCTION

SHEET NUMBER	A2.02
SHEET TITLE	EXTERIOR ELEVATIONS
DATE	10/18/21
CHECKED BY	J.LOHSE
DRAWN BY	J.VERNOY
PROJECT NUMBER	2021

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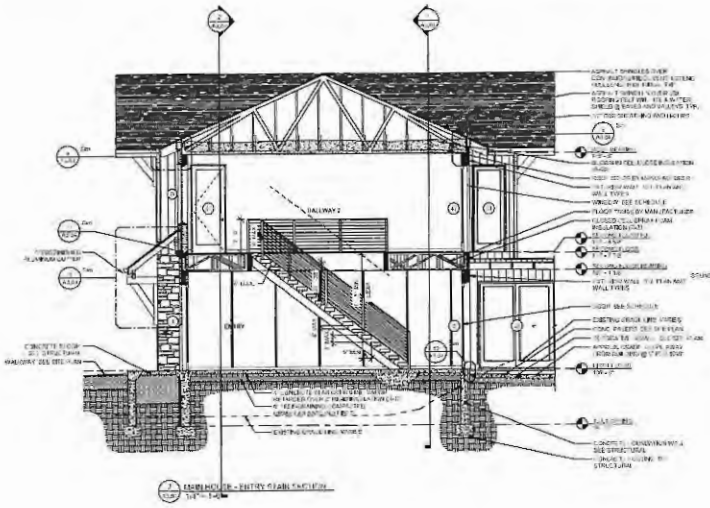
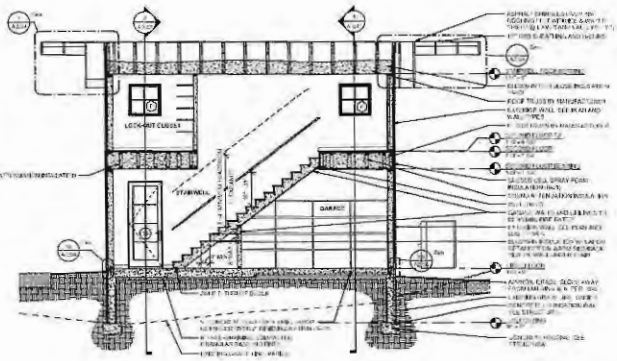
NO	REVISIONS	DATE
1	REVISION 1	10/18/21
4	REVISION 4	12/15/21

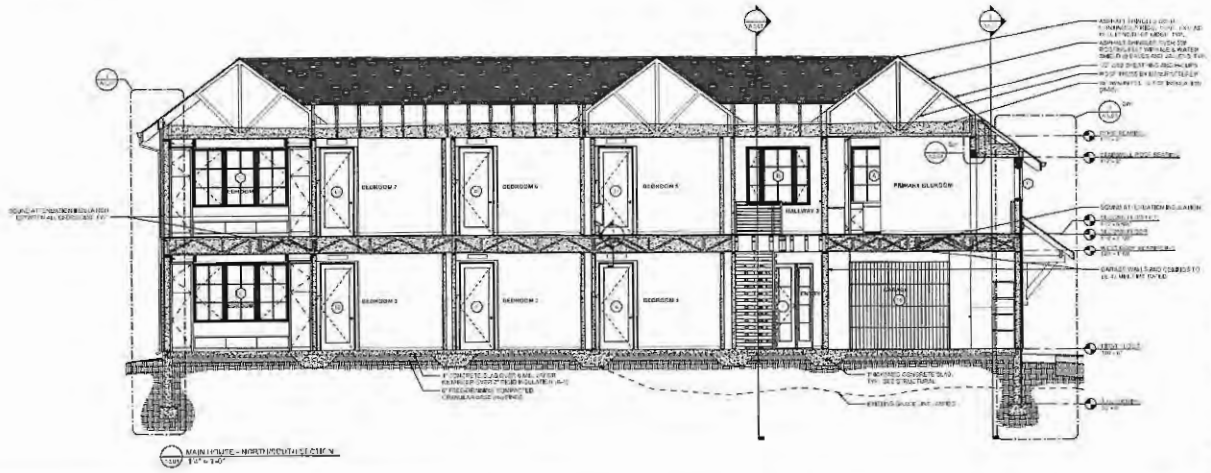
GENERAL NOTES



1 MAIN HOUSE - ENTRY STAIR SECTION
1/8" = 1'-0"



2 MAIN HOUSE - PRIMARY SUITE STAIR SECTION
1/8" = 1'-0"



3 MAIN HOUSE - NORTH/SOUTH SECTION
1/8" = 1'-0"

FOR CONSTRUCTION

NO	REVISIONS	DATE
1	DESIGN REVISION 1	12.21.23
2	DESIGN REVISION 2	01.16.24

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N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER	22.041
DRAWN BY	JWL/MSH
CHECKED BY	KWE/RKE
DATE	08/10/23
SHEET TITLE	BUILDING SECTIONS
SHEET NUMBER	A3.01

4 MAIN HOUSE - EAST WALL SECTION
1/2" = 1'-0"

3 MAIN HOUSE - WEST WALL SECTION
1/2" = 1'-0"

2 MAIN HOUSE - NORTH WALL SECTION
1/2" = 1'-0"

1 MAIN HOUSE - SOUTH WALL SECTION
1/2" = 1'-0"

FOR CONSTRUCTION

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NO	REVISIONS	DATE
	ADDENDUM 1	07.14.23

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N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER	22.041
DRAWN BY	Z. VAN NES
CHECKED BY	J. LEGRAC
DATE	SEPT 2022
SHEET TITLE	WALL SECTIONS
SHEET NUMBER	A3.03

FOR CONSTRUCTION

SHEET NUMBER	A3.05
SHEET TITLE	DETAILS
DATE	09/10/21
CHECKED BY	J.LOEBIG
DRAWN BY	Z.OLSON
PROJECT NUMBER	22-01

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N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

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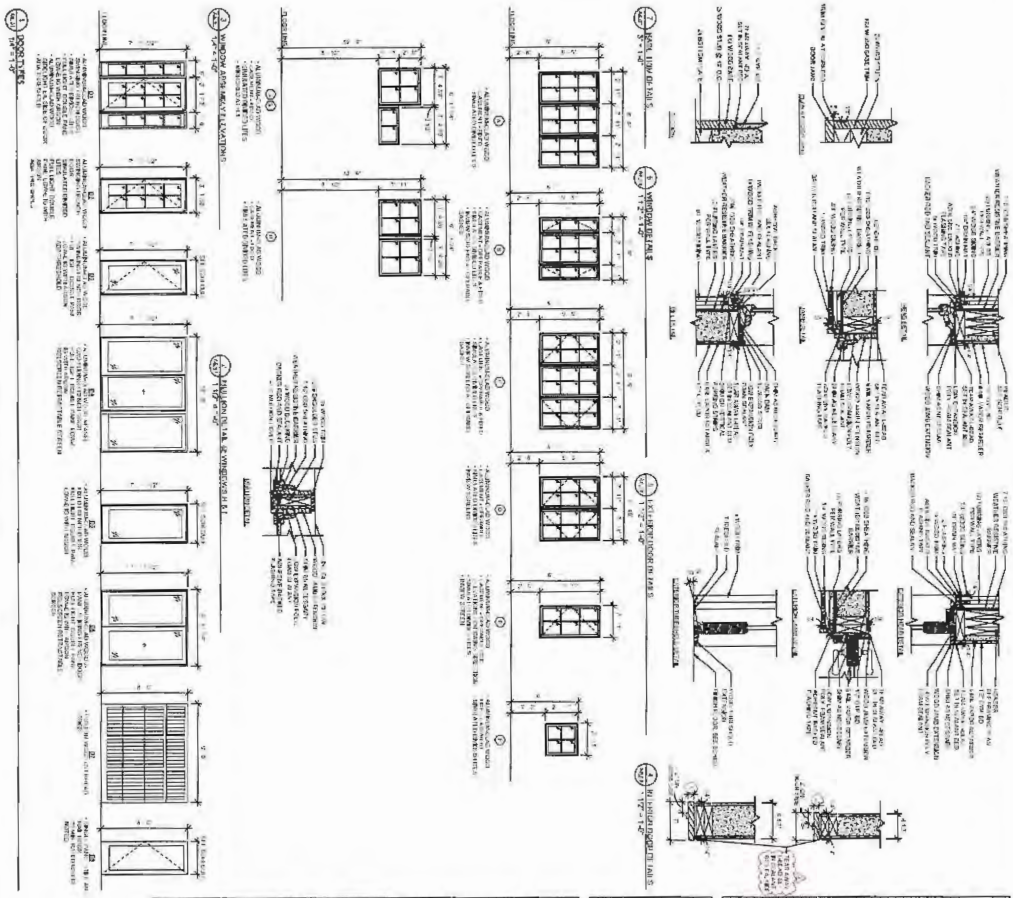
NO	REVISIONS	DATE
1	REVISION 1	10.18.21



ROOM FINISH SCHEDULE

WINDOW ASSEMBLY SCHEDULE

DOOR SCHEDULE

FOR CONSTRUCTION

NO.	REVISIONS	DATE
1	REVISION 1	10/16/23
3	REVISION 3	01/22/24
6	REVISION 6	05/16/24
7	REVISION 7	07/02/24

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**SHORELINE
AMERICAN ORTHODONTICS**
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER
DRAWN BY
CHECKED BY
DATE
SHEET TITLE
ROOM FINISH, DOOR AND WINDOW SCHEDULES AND ELEVATIONS
SHEET NUMBER
A6.01

APPLIANCE SCHEDULE

KEY	TYPE	ITEM QTY	MFGR	MODEL	PRODUCT #	FINISH	SIZE	NOTES
AP01A	FREEZER	1	JENN-AIR	[illegible]	[illegible]	PANEL	[illegible]	R1
AP01B	REFRIGERATOR	1	JENN-AIR	[illegible] PANEL READY BUILT-IN COLUMN REFRIGERATOR, RIGHT SWING	[illegible]	PANEL	[illegible]	R1
AP02	RANGE	[illegible]	JENN-AIR	[illegible]	[illegible]	STAINLESS STEEL	[illegible]	
AP03	RANGE HOOD	[illegible]	BEST	[illegible] CABINET INSERT HOOD [illegible]	[illegible]	STAINLESS STEEL	[illegible]	
AP04	RANGE HOOD BLOWER	[illegible]	BROAN	[illegible] INTERNAL BLOWER [illegible]	[illegible]	STAINLESS STEEL	[illegible]	
AP05	DISHWASHER	[illegible]	BOSCH	800 SERIES 24" CUSTOM PANEL DISHWASHER	[illegible]	PANEL	[illegible]	
AP06A	MICROWAVE	[illegible]	FRIGIDAIRE	GALLERY [illegible] BUILT-IN MICROWAVE	[illegible]	STAINLESS STEEL	[illegible]	
AP06B	MICROWAVE TRIM KIT	[illegible]	FRIGIDAIRE	GALLERY [illegible] MICROWAVE TRIM KIT	[illegible]	STAINLESS STEEL	[illegible]	
AP07	UC REFRIGERATOR	[illegible]	JENN-AIR	PANEL-READY [illegible] UNDER COUNTER REFRIGERATOR	[illegible]	PANEL	[illegible]	
AP08	GRILL	[illegible]	BROIL KING	REGAL [illegible]	[illegible]	STAINLESS STEEL	[illegible]	R1
AP09	COFFEE STATION	[illegible]						R1
AP11	ALL IN ONE W/D	[illegible]	GE	[illegible] WASHER DRYER COMBO	[illegible]	WHITE	[illegible]	
AP12	WASHER	[illegible]	ELECTROLUX	FRONT LOAD PERFECT STEAM WASHER [illegible]	[illegible]	TITANIUM	[illegible]	
AP13	DRYER	[illegible]	ELECTROLUX	FRONT LOAD PERFECT STEAM GAS DRYER [illegible]	[illegible]	TITANIUM	[illegible]	
AP14	TV	[illegible]	SAMSUNG	[illegible] THE FRAME [illegible]	[illegible]	CHARCOAL BLACK	[illegible]	
AP15	WINE CABINET	[illegible]	[illegible]	[illegible] WINE CABINET	[illegible]	BLACK	[illegible]	R1

KEY

REMARKS
R1 BY OWNER
R2 HINGE TO HANDLE JOB KIT [illegible]
R3 DO NOT INSTALL SIDE SHELF OR BURNER

FURNITURE SCHEDULE

KEY	TYPE	ITEM QTY	MFGR	MODEL	PRODUCT #	FINISH	FABRIC	SIZE	NOTES
FN01	BED [illegible]	[illegible]	FUSION DESIGNS	ADDISON PANEL BED	[illegible]	OAK [illegible] HARBOR GRAY	N/A	QUEEN	
FN02	MATTRESS (QUEEN)	[illegible]	SEALY	SATISFYER [illegible]	[illegible]	N/A	N/A	QUEEN	
FN03	MATTRESS PROTECTOR	[illegible]	MALOUF	SLEEP TITE [illegible]	[illegible]	N/A	N/A	QUEEN	[illegible]
FN04A	PILLOW A	[illegible]				N/A	N/A	QUEEN	[illegible]
FN04B	PILLOW B	[illegible]				N/A	N/A	QUEEN	[illegible]
FN05A	NIGHTSTAND	16	FUSION DESIGNS	ADDISON [illegible] DRAWER NIGHTSTAND	[illegible]	OAK [illegible] HARBOR GRAY	N/A	[illegible]	[illegible]
FN05B	NIGHTSTAND (BEDROOM 4 & [illegible])	[illegible]	FUSION DESIGNS	ADDISON [illegible] DRAWER NIGHTSTAND	[illegible]	OAK [illegible] HARBOR GRAY	N/A	[illegible]	[illegible]
FN05C	NIGHTSTAND (PRIMARY BEDROOM)	[illegible]	FUSION DESIGNS	ADDISON [illegible] DRAWER NIGHTSTAND	[illegible]	OAK [illegible] HARBOR GRAY	N/A	[illegible]	[illegible]
FN07	DRESSER	10	FUSION DESIGNS	ADDISON 6 DRAWER DRESSER	[illegible]	OAK [illegible] HARBOR GRAY	N/A	[illegible]	[illegible]
FN08	MIRROR	10	KOHLER	[illegible] MIRROR	[illegible]	MATTE BLACK	N/A	[illegible]	[illegible]
FN09A	SIDE CHAIR ([illegible])	14	ENGLAND	HENLEY SWIVEL CHAIR	[illegible]	DARK BROWN	[illegible]	[illegible]	
FN09B	SIDE CHAIR (LIVING ROOM)	[illegible]	ENGLAND	HENLEY SWIVEL CHAIR	[illegible]	DARK BROWN	[illegible]	[illegible]	
FN10	TASK CHAIR	[illegible]	ASHLEY	SWIVEL HOME OFFICE DESK CHAIR W/ [illegible] SEAT	[illegible]	BROWN	N/A	[illegible]	[illegible]
FN11	SOFA	[illegible]	SMITH BROTHERS	[illegible] SOFA	[illegible]	ANTIQUE [illegible]	[illegible]	[illegible]	
FN12A	THROW PILLOW (SOFA A)	4	SMITH BROTHERS	STYLE [illegible]		N/A	[illegible]	[illegible]	
FN12B	THROW PILLOW (SOFA B)	4	SMITH BROTHERS	STYLE [illegible]		N/A	[illegible]	[illegible]	
FN13	END TABLE (LIVING ROOM)	[illegible]	FUSION DESIGNS	[illegible] OCCASIONAL COLLECTION END TABLE		OAK [illegible] HARBOR GRAY	N/A	[illegible]	
FN14	END TABLE (HALLWAY 2 & SUITE)	[illegible]	[illegible]	[illegible] END TABLE	[illegible]	N/A	N/A	[illegible]	[illegible]
FN15	OTTOMAN	[illegible]	SMITH BROTHERS	[illegible] SERIES OTTOMAN	[illegible]	N/A	[illegible]	[illegible]	
FN16	BARSTOOL	[illegible]	[illegible]	[illegible] COUNTER STOOL	[illegible]	WOOD	N/A	[illegible]	
FN17A	WINDOW SEAT (HALLWAYS)	[illegible]	UPHOLSTERY PLUS			N/A	[illegible]	[illegible]	[illegible]
FN17B	WINDOW SEAT ([illegible])	[illegible]	UPHOLSTERY PLUS			N/A	[illegible]	[illegible]	[illegible]
FN18A	THROW PILLOW (WINDOW SEAT A)	[illegible]	SMITH BROTHERS	STYLE [illegible]		N/A	[illegible]	[illegible]	
FN18B	THROW PILLOW (WINDOW SEAT B)	[illegible]	SMITH BROTHERS	STYLE [illegible]		N/A	[illegible]	[illegible]	
FN19	RUG (BEDROOMS [illegible])	[illegible]				N/A		[illegible]	
FN20	RUG (BEDROOMS 4 & 8)	[illegible]				N/A		[illegible]	
FN21	RUG (LIVING ROOM)	[illegible]				N/A		[illegible]	
FN22	RUG (PRIMARY BEDROOM)	[illegible]				N/A		[illegible]	

KEY

REMARKS
R1 HARDWARE FINISH - MATTE BLACK
R2 SUPPLIED BY OWNER
R3 TAKE FIELD MEASUREMENTS BEFORE FABRICATION
R4 BY PLUMBER

1 SECOND FLOOR APPLIANCE & FURNITURE PLAN
1/8" = 1'-0"

FOR CONSTRUCTION

NO	REVISIONS	DATE
1	REVISION 1	10.18/23
6	REVISION 6	05/15/24

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SHORELINE
AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER
22.041

DRAWN BY
Z. WENDT

CHECKED BY
J. LEHRKE

DATE
08/18/23

SHEET TITLE
SECOND FLOOR APPLIANCE & FURNITURE PLAN

SHEET NUMBER
I1.02

PLUMBING FIXTURE SCHEDULE

KEY	TYPE	ITEM QTY	MFGR	IMAGE	MODEL	PRODUCT #	FINISH	SIZE	NOTES
P01		5							
P02		10							
P03		5							
P04		1							
P05		1							
P06		1							
P07		1							
P08		1							
P09		5							
P10		1							
P11		1							
P12		1							
P13		1							
P14		1							
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P19		1							
P20		1							
P21		1							
P22		1							
P23		1							
P24		1							
P25		1							
P26		1							
P27		1							
P28		1							
P29		1							

KEY

REMARKS
R1 BY GENERAL CONTRACTOR
R2 ALL HARDWARE TO MATCH/ASSOCIATE PLUMBING FIXTURE HARDWARE
R3 SEE SHEET A0.01 FOR ADDITIONAL PLUMBING FIXTURE SCHEDULES

1 FIRST FLOOR PLUMBING FIXTURE PLAN
1/4" = 1'-0"

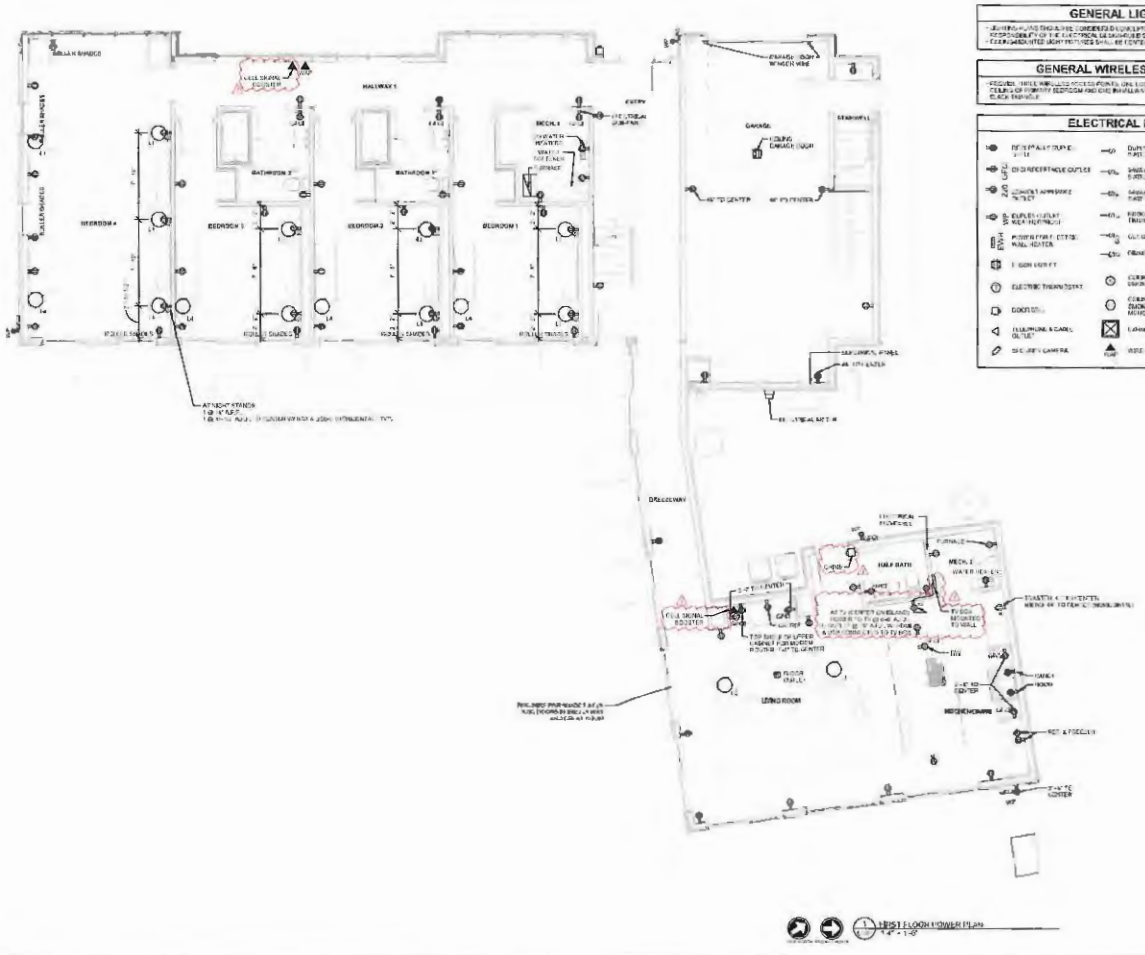
FOR CONSTRUCTION

LEGACY architecture

NO.	REVISIONS	DATE
1	REVISION 1	10.16.23

SHORELINE AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER 22.001
DRAWN BY J. VAN NEST
CHECKED BY J. LEHRKE
DATE 09/18/23
SHEET TITLE FIRST FLOOR PLUMBING FIXTURE PLAN
SHEET NUMBER P2.01



GENERAL ELECTRICAL NOTES

ELECTRICAL PLANS SHOULD BE CONSIDERED DIAGRAMMATIC IN NATURE. FINAL DESIGN SHALL BE THE RESPONSIBILITY OF THE ELECTRICAL CONTRACTOR OR ELECTRICAL SUBCONTRACTOR.

GENERAL LIGHTING NOTES

LIGHTING PLANS SHALL BE CONSIDERED DIAGRAMMATIC IN NATURE. FINAL DESIGN SHALL BE THE RESPONSIBILITY OF THE ELECTRICAL CONTRACTOR OR ELECTRICAL SUBCONTRACTOR.

GENERAL WIRELESS NETWORK NOTES

ELECTRICAL PLAN LEGEND

DUPLEX ELECTRIC OUTLET	DUPLEX ELECTRIC OUTLET	TERMINATED LIGHTING
DUPLEX ELECTRIC OUTLET	SINGLE ELECTRIC OUTLET	RECESSED CAN LIGHTING
DUPLEX ELECTRIC OUTLET	SINGLE ELECTRIC OUTLET	WALL MOUNTED LIGHTING
DUPLEX ELECTRIC OUTLET	SINGLE POLE SWITCH	CEILING FAN & LIGHTING
POWER FORCE ELECTRIC WALL HEATER	DUPLEX SWITCH	UNDER CABINET LIGHTING
T.V. OUTLET	FRENCH DOOR	FLUORESCENT LAMP
ELECTRIC THERMOSTAT	CEILING MOUNTED SMOKE DETECTOR	LAMP
DOORBELL	CEILING MOUNTED SMOKE & CARBON MONOXIDE DETECTOR	LAMP
TELEPHONE & CABLE OUTLET	LIGHTING FAN	LAMP
SECURITY CAMERA	WIRE FOR ACCESS PORT	

NO	REVISIONS	DATE
1	REVISIONS	03/15/21
2	REVISIONS 2	04/12/21

LEGACY architecture
655 Elm Avenue, Suite 101
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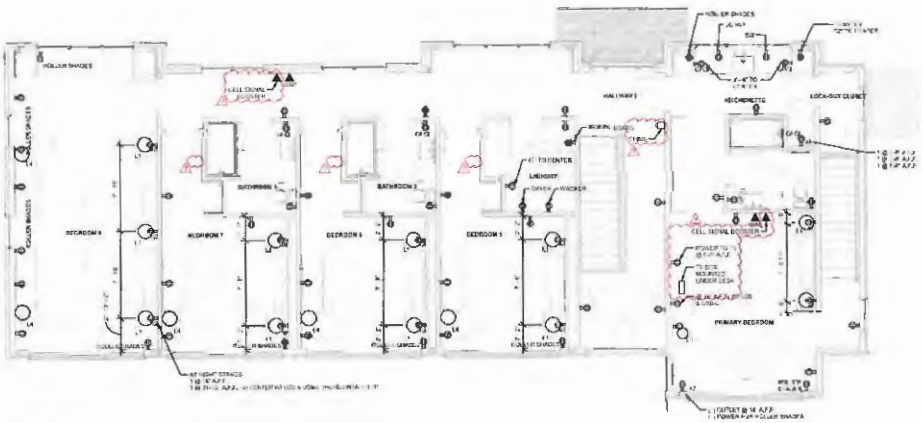
(262) 377-1000
www.legacyarchitecture.com

SHORELINE
AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

FOR CONSTRUCTION

PROJECT NUMBER	22.041
DRAWN BY	Z. WILHOIT
CHECKED BY	A.LEHRKE
DATE	09/15/21
SHEET TITLE	FIRST FLOOR POWER PLAN
SHEET NUMBER	E1.01

1 FIRST FLOOR POWER PLAN
1/4" = 1'-0"



1 SECOND FLOOR POWER PLAN
1/8" = 1'-0"

GENERAL ELECTRICAL NOTES

- ELECTRICAL PLANS SHALL BE CONSIDERED CONCEPTUAL IN NATURE. FINAL DESIGN SHALL BE THE RESPONSIBILITY OF THE ELECTRICAL SPECIALIZED ELECTRICAL CONTRACTOR.
- ALL KITCHEN APPLIANCES SHOWN IN DRAWINGS ARE ASSUMED AND SHALL BE CONFIRMED WITH OWNER BEFORE ROUGH-IN, INSTALLATION. ELECTRICIAN SHALL BE SUPPLIED ALL NECESSARY INFORMATION FROM APPLIANCE SUPPLIERS.
- ALL DIMENSIONS SHOWN ARE APPROXIMATE AND SHALL BE VERIFIED IN FIELD BY ELECTRICIAN.

GENERAL LIGHTING NOTES

- ELECTRICIAN SHALL BE RESPONSIBLE FOR COORDINATING ALL INTERIOR AND EXTERIOR FIXTURES WITH ARCHITECT. ALL ELECTRICAL AND LIGHTING FIXTURES SHALL BE APPROVED BY OWNER.
- RECESSED LIGHTING FIXTURES SHALL BE CONSIDERED IN ROOMS WITH GREATER THAN 8'-0" CEILINGS.

ELECTRICAL PLAN LEGEND

DUPLEX RECEPTACLE OUTLET	DUPLEX SWITCH	CEILING MOUNTED LIGHT FIXTURE
GFCI RECEPTACLE OUTLET	SINGLE POLE SWITCH	RECESSED CAN LIGHT FIXTURE
WATERPROOF GFCI OUTLET	4-WAY SWITCH	WALL MOUNTED LIGHT FIXTURE
CLOSET OUTLET WITH PUSHBUTTON	DIMMER SWITCH	CEILING FAN & LIGHT FIXTURE
THERMOSTAT FOR ELECTRIC WALL HEATER	OCCUPANCY SENSOR SWITCH	UNDER CABINET LIGHT
FLOOR OUTLET	SMART SWITCH	4' FLUORESCENT LAMP
ELECTRIC THERMOSTAT	CARBON MONOXIDE DETECTOR	8' FLUORESCENT LAMP
DOOR BELL	COMBINATION SMOKE DETECTOR AND CARBON MONOXIDE DETECTOR	2'x2' RECESSED TROFFER
TELEPHONE & CABLE OUTLET	SMOKE ALARM	2'x4' FLUORESCENT TROFFER
SECURITY CAMERA	WIRELESS ACCESS POINT	TRACK LIGHTING

NO	REVISIONS	DATE
6	REVISION 6	05.10.24
7	REVISION 7	07.10.24

LEGACY architecture
630 Elm Avenue, Suite 101
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(630) 764-9393
www.legacyarchitecture.com

FOR CONSTRUCTION

SHORELINE
AMERICAN ORTHODONTICS
N2047 SOUTH PINE BEACH ROAD
OOSTBURG, WISCONSIN 53070

PROJECT NUMBER	22.011
DRAWN BY	Z. WENDT
CHECKED BY	J. LEHRKE
DATE	09/16/23
SHEET TITLE	SECOND FLOOR POWER PLAN
SHEET NUMBER	E1.03

Town of Holland, WI
Saturday, November 2, 2024

Chapter 330. Zoning

Article IV. Zoning Districts

§ 330-27. R-1 Single-Family Residence District.

A. Purpose. This district is intended to provide for single-family dwellings east of Interstate 43 and in areas designated for potential growth, such as adjacent to the Villages of Oostburg and Cedar Grove.

B. Lands included. Only properties east of Interstate 43 or in areas designated for potential growth in the Town of Holland Comprehensive Plan, such as adjacent to the Village of Oostburg or Cedar Grove or other unincorporated residential areas, may become R-1; however, any other lots zoned R-1 prior to the farmland preservation recertification and subsequent amendment of this chapter on December 12, 2016, are allowed to remain R-1.

(1) Permitted uses.

(a) Home occupation as defined in § **330-9**. Said request shall comply with the provisions of Article **VII** of this chapter.

(b) One single-family dwelling.
[Amended 2-8-2021 by Ord. No. 1-2021]

(c) Public park, playground, and recreation areas of less than two acres without buildings or structures.
[Amended 8-13-2018 by Ord. No. 6-2018]

(d) Apiculture/beekeeping, if all beehives and colonies are located five feet or greater from any property line and 50 feet or greater from any neighboring residence.
[Added 8-14-2023 by Ord. No. 2023-08]

(2) Conditional uses. See Article **VI** of this chapter for application, review and approval procedures for conditional uses.

(a) Guest apartment, in the principal dwelling, but shall be limited to owner-occupied homes, shall occupy no more than 25% of the principal dwelling, shall be comprised only of a bedroom, bathroom and sitting area, shall not include areas for food preparation or eating, and shall comply with the off-street parking requirements of Article **XI** of this chapter.
[Amended 4-10-2017 by Ord. No. 3-2017]

(b) No conditional use permit for an accessory apartment may be issued after April 10, 2017. A preexisting accessory apartment, in the principal dwelling or preexisting accessory building, but shall be limited to owner-occupied homes, shall occupy no more than 25% of the principal dwelling and shall comply with the off-street parking requirements of Article **XI** of this chapter.

[Added 4-10-2017 by Ord. No. 3-2017]

(c) Apiculture/beekeeping, if any beehive or colony is located less than five feet from any property line or less than 50 feet from any neighboring residence.
[Added 8-14-2023 by Ord. No. 2023-08]

C. Area, height and yard requirements.

(1) Lot.

(a) Area: minimum of 10,000 square feet for lots served by municipal sanitary sewers or other county- and state-approved off-site cluster or common sewage disposal system and 20,000 square feet for lots served by on-site sewage disposal systems for single-family dwellings, except where county or state regulations require more.
[Amended 7-8-2024 by Ord. No. 2024-05]

(b) Width: minimum of 66 feet for sewered lots and 100 feet for unsewered lots.

(c) Coverage: No more than 50% of a lot shall be occupied by a residential building, accessory buildings, patios, driveways, and other impermeable surfaces.

(2) Building height.

(a) Residence: maximum 35 feet.

(b) Other structures: maximum 35 feet.

(3) Yards.

(a) Dwelling.

[1] Rear: minimum 25 feet.

[2] Side: minimum 15 feet.

[3] Street: See Article **XV** of this chapter.

(b) Other structures.

[1] Rear: minimum 10 feet or 1/2 the height of the structure, whichever is greater.

[2] Side: minimum 10 feet or 1/2 the height of the structure, whichever is greater.

[3] Street: See Article **XV** of this chapter.**[1]**

[1] *Editor's Note: Former Subsection C(4), Density, which immediately followed, was repealed 7-8-2024 by Ord. No. 2024-05.*

D. Development agreement and reimbursement of expenses. See § **330-19** of this chapter for possible requirements.

TOWN OF HOLLAND
BOARD OF APPEAL HEARING PROCEDURES
Administrative Appeal
R-1, Single Family Residential Zoning Use Interpretation

Public Hearing Operational Procedures (Chair reads A-M)

A. This is a hearing on an application for an interpretation of Holland Town Code §§ 330-9 and 330-27 following the Town Plan Commission's review and recommendation at its meeting on November 7, 2024, that the proposed use of the dwelling at N2047 Pine Beach Road South complies with Holland Town Code § 330-27: R-1 Single-Family Residence District, and that case law, general zoning principles, and public policy preclude the Town from prohibiting the Owner's proposed use of the subject property by its guests within the R-1 Zoning District.

B. Holland Town Code § 330-97. Appeals and applications.

   Appeals of the decision of the Building Inspector or any administrative official concerning the literal enforcement of this chapter may be made by any person aggrieved or by any officer, department or board of the Town. Such appeals shall be filed with the Secretary within 30 days after the date of written notice of the decision or order of the Building Inspector or administrative official. Applications may be made by the owner of the structure, land, or water to be affected at any time and shall be filed with the Secretary.

C. Wis. Stat. § 62.23(7)(e)8. Board Role in Appeal

   This hearing will be conducted as a de novo hearing, meaning the Board will receive evidence it deems relevant to the decision and will not rely on information or evidence presented to the Plan Commission for its interpretation and recommendation.

   The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

D. The Chair will announce the request.

E. The applicant will present the request to the Board with any justification for the request. The Board may ask for clarification or additional information during the presentations. The Chair will swear in any witnesses giving testimony.

F. The owner will present justification for its interpretation of the ordinance to the Board. The Board may ask for clarification or additional information during the presentations. The Chair will swear in any witnesses giving testimony.

G. The Town Plan Commission will present justification for its interpretation and recommendation. The Chair will swear in any witnesses giving testimony. The Board may ask for clarification or additional information during the presentations.

H. Any correspondence received by the board related to the appeal will be presented.

I. Everyone wishing to make public comment will have an opportunity to speak. Each speaker will be limited to three minutes. Statements will be addressed to the Board and not to others in the room. This is not a forum for debate. If statements for your position are the same as previous statements, do not repeat them, but summarize.

J. The Board members will disclose any ex parte communications.

K. The applicant will have an opportunity to present rebuttal.

L. The Board members will ask any final questions.

M. After all comments and presentations have been made and recorded, the chair will close the public hearing for Board deliberations, motions, decisions and justification for the decision. Additional information or clarification by the Board will not be accepted once the public meeting has concluded.

N. Board Determination Process

1. Findings of fact (based on ordinance jurisdiction and standards). The Board will:
    a. determine whether the Board has the authority to make a decision.
    b. determine whether the application and evidence contains the information necessary to make a decision.
    c. record pertinent facts from the record/ hearing on the decision form.

2. Conclusions of law. The Board will:
    a. specify applicable legal criteria. (See attached Addendum A)
    b. determine an interpretation of Holland Town Code §§ 330-9 and 330-27.

3. Order and Determination. The Board will:
    a. decide/ vote on the case. (Roll call by BOA Secretary)
    b. direct the Plan Commission to take any necessary action.

ADDENDUM A: APPLICABLE CRITERIA

1. The Board has authority the to hear and decide applications for interpretations of the zoning regulations, after the Town Plan Commission has made a review and recommendation. Holland Town Code § 330-96A.(4); Wis. Stat. § 62.23(7)(e)4.

2. An appeal may be taken to the Board by any person aggrieved from decisions or orders of Town officials within 30 days after the date of notice of the decision or order. Holland Town Code § 330-97; Wis. Stat. § 62.23(7)(e)4.

3. A person is "aggrieved" when the decision directly causes injury to the person's legally protected interests. *Friends of Black River Forest v. Kohler Co.*, 2022 WI 52, 402 Wis. 2d 587, 977 N.W.2d 342.

4. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken. Wis. Stat. § 62.23(7)(e)8.

5. The concurring vote of four members of the Board shall be necessary to reverse any order, decision, or determination of the Plan Commission or to make an interpretation. Holland Town Code § 330-95E.

6. Holland Town Code § 330-6 provides, "In the interpretation of this chapter and application, the provisions of this chapter shall be held to be minimum requirements and shall be liberally construed in favor of the Town of Holland and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes."

7. Ordinance interpretation begins with the language of the ordinance, if the meaning of the language is plain, then the plain meaning is applied to the facts at hand. *Bruno v. Milwaukee County*, 2003 WI 28, ¶ 6, 260 Wis.2d 633, 660 N.W.2d 656. If the meaning is ambiguous, then the decision maker must look to other sources beyond the text of the ordinance to determine the meaning of the ordinance.

8. Where the ordinance does not define a word or phrase, the word or phrase will be given its plain, ordinary and usually understood meaning. *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110.

9. Context and structure of the ordinance are important to meaning; therefore, the ordinance text is interpreted in the context in which it is used, not in isolation but as part of a whole and in relation to the language of surrounding or closely related ordinances. *Kalal* at ¶ 46. Explicit ordinance statements of purpose or intent are considered part of the context of the ordinance and these provisions may guide a plain-meaning interpretation of the ordinance. *Kalal* at ¶ 49.

10. If after examining the text of the ordinance, there is a plain, clear meaning, then there is no ambiguity and there is no need to consult other sources to determine the meaning of the ordinance. There is ambiguity if reasonably well-informed persons are confused as to the meaning of the ordinance, e.g. there are two or more reasonable meanings of the ordinance. *Bruno v. Milwaukee Cnty.*, 2003 WI 28, ¶ 19, 260 Wis.2d 633, 660 N.W.2d 656.

11. The purpose of the R-1 Single-Family District is to provide for single-family dwellings east of Interstate 43 and in areas designated for potential growth, such as adjacent to the Villages of Oostburg and Cedar Grove. Holland Town Code § 330-27A.

12. The permitted uses within the R-1 Single-Family District include one single-family dwelling. Holland Town Code § 330-27B.(1)(b).

13. The Holland Town Code defines the following words or phrases in Holland Town Code § 330-9:

    a. BUSINESS: An occupation, employment, or enterprise that occupies time, attention, labor, and materials, or wherein merchandise is exhibited or sold, or where services are offered, other than home occupations.
    b. DWELLING: A building designed or used as a residence, but does not include hotels, motels, tents or cabins.
    c. DWELLING UNIT: One or more rooms designed, occupied, used, or intended to be occupied or used, as separate living quarters, with a food preparation area and sleeping and sanitary facilities provided within such room(s). Dwelling units include residential, tourist room house, seasonal employee housing and dormitory units.
    d. DWELLING SINGLE-FAMILY: A detached dwelling designed for or occupied exclusively by one family.
    e. FAMILY: One or more individuals occupying a dwelling unit and living as a single household unit.
    f. HOTEL: A facility offering transient lodging accommodations to the general public and providing additional services such as restaurants, meeting rooms, and recreation facilities.
    g. HOUSEHOLD: A family living together in a single dwelling unit, with common access to and common use of all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit.
    h. MOTEL: A series of attached, semi-attached, or detached sleeping units for the accommodation of transient guests.
    i. USE: The purpose or activity for which the land or building thereon is designed, arranged, or intended or for which it is occupied or maintained.

14. The burden of proof is on the applicant.

TOWN OF HOLLAND PLAN COMMISSION
OFFICIAL PROCEEDINGS OF THE MONTHLY MEETING
W3005 County Road G, Cedar Grove, WI 53013
Thursday, November 7, 2024 7:30pm

1. Call to order:
   Plan Commission Chair David Huenink called the meeting to order at 7:32pm.
2. Pledge of Allegiance:
   Chair David Huenink led the attendees in the Pledge of Allegiance.
3. Certify that the requirements of the Wisconsin Open Meetings law have been met:
   Plan Commission Clerk Janelle Kaiser certified that the requirements of the Wisconsin Open Meeting Law had been met. The agenda for this meeting was posted at the Holland Town Hall and on the Town's website. A public hearing notice was posted at the Holland Town Hall and on the Town's website and was published in the Sheboygan Press on October 24, 2024 and October 31, 2024.
4. Record retention certification:
   Plan Commission Clerk Janelle Kaiser stated record retention is up to date.
5. Roll call:
   Attendees: Chair David Huenink, Bryan Kaiser, Roy Teunissen, Craig Droppers – Alternate, Brody Stapel, Matthew Teunissen, Jack Stokdyk, and David Mueller.
   Absentee(s): Tom Huenink, Town Building Inspector.
   Signed-In Attendees: Diane Holstrom-Meisser, Kevin Kappers, Scott Davis, Peter Riese, Kenneth Tyler, Bin Murphy, Jo Murphy, Dave Velier, Ann Grittinger, Ann Calvert, Tom Benzmiller, Marlene Benzmiller, John Dickmann, Joseph Maniaci, Kristen Sheeran, Ken Hilbelink, Marjorie Hamann, Christy Smith, Ellen Anderson, Julie Theune, Lee Kaat, Kurt Nielsen, Amy Q Scott, Larry Britton, Judy Britton, Kathryn Potos, Koenen Potos, Susan Rose, Jeremy Cherny, Sara Cherny, Todd Johnson, Barbara Dallman, John Dallman, Brian Stuart, Diane Stuart, Susan LaBudde Esq., Julie Kuether, Ann Van Eerden, Michael Van Eerden, Douglas Hamilton, Karen Jones, Mary DeMaster, Lucy McCue, Ann Campione, Roy Ingelse, Jane Hamilton, John Patek and Nancy Patek.
   Other Attendees: Janelle Kaiser, Town Clerk-Treasurer and Zoning Administrator.
6. Adopt agenda as official order of business:
   Motion by Jack Stokdyk, seconded by Bryan Kaiser, to adopt the agenda for the November 7, 2024 Plan Commission meeting as presented; the motion carried by unanimous voice vote.
7. Plan Commission procedures and opportunities for improvement:
   Janelle Kaiser reported some improvements to Town application forms and application support documents.
8. Review/approve minutes of previous meeting(s):
   Motion by Brody Stapel, seconded by David Mueller, to approve the minutes from the October 7, 2024 Plan Commission meeting as presented during the November 7, 2024 Plan Commission meeting; the motion carried by unanimous voice vote.
9. Information for Plan Commission from Town Board:
   a. Request by Gerald Davies for a minor land division and rezonings at N1586 Van Driest Lane:
      Chair Huenink reported that the Holland Town Board accepted the recommendation of the

Plan Commission at their October 14, 2024 board meeting and approved Gerald Davies' request for a minor land division and rezonings at N1586 Van Driest Lane, contingent on agreement regarding the structures on the northern parcel.

10. Building inspector items:
    a. Review building permits report:
    The Plan Commission reviewed the October 2024 building inspection report submitted by Building Inspector Tom Huenink.
    b. Review building permit requests needing Plan Commission review:
    None.
    c. Discuss follow-up items:
    None.

11. Public input:
    a. Janelle Kaiser was contacted by Rhonda Anderson of N1838 County Road KW (parcel 59006062852, 7.40 acres, zoned A-5) about a minor land division proposal. Rhonda has proposed to divide N1838 County Road KW to create a 3.582-acre parcel and a 3.825-acre parcel; the proposed 3.582-acre parcel would contain the existing dwelling an accessory structure. Both resultant parcels would meet the requirements of the A-5 zoning district, a request for rezoning would not be required under the current proposal. The Plan Commission acknowledged that Rhonda could submit a minor land division application and requested that Janelle Kaiser confirm that no prior land division involved the property in the last 10 years in accordance with Town ordinances.
    b. Let these minutes show that there were numerous members of the public present to provide public input for agenda items 16 and 17. Public input during agenda item 11 proceeded for close to 2 hours. Let these minutes also show that meeting minutes are an official record of the proceedings of the governing body and not intended to be a transcript of said meeting. They must record the substance of what occurred at a meeting and should focus on what was done at the meeting, rather than what was said. Therefore, the following is a summarization of public comment provided at this time:
        (1) Several members of the public inquired about notices provided by the Town for tonight's meeting topics and the Town processes followed for proposed ordinance drafting and adoptions.
        (2) Inquiry about the legal opinion provided by the Town attorney about the use of the property at N2047 Pine Beach Road South. Some members of the public expressed disagreement with certain aspects of the legal opinion.
        (3) There were several comments about the properties owned by American Orthodontics (AO) in the Town of Holland and their current and proposed use. Currently, there are three dwellings owned by AO on Foster Road South and one on Pine Beach Road South. Many expressed that the current and proposed use of the properties is commercial in nature, rather than residential, and does not comply with Holland Town Code §330-27 R-1 Single-Family Residence District, whereas the persons using the properties are there for business purposes. An inquiry was made about whether a deposit is required to stay at the properties. Some provided comments about the size and footprint of the dwelling at N2047 Pine Beach Road South and whether the structure meets building code requirements and ordinance requirements of Town, County, and State.

(4) A member of the public inquired about a recent sale of the property at N1623 Alexander Lane and whether the Town had been contacted about any proposed future use of the property.
(5) Several people expressed that the Town Plan Commission and Board should protect the interests of the public and consider their concerns. Some spoke of the legality of actions by the Town relating to the AO properties and to what degree certain actions were taken to prevent lawsuits.
(6) Some spoke of short-term rental (STR) properties and their impact on the community, and others recognized that short-term rental activities are an allowed use for all residential property in the State of Wisconsin and that the Town license to regulate said STR uses provides the opportunity for recourse if ordinances are not being followed by STR property owners. There were comments about preserving the residential character, nature, and environment of their neighborhoods located in the R-1 Single Family Residence District.

As stated above, a summary of the comments provided during this agenda item is provided in these minutes. Let these minutes show that members of the public posed numerous questions and comments at this time, to some of which certain members of the Plan Commission responded.

12. Exterior lighting on structures at W2730 County Road A South, on which property an existing conditional use permit allows operation of a business that offers indoor storage:
A letter was sent by certified mail to the property owner on October 25, 2024, which provided a deadline of November 22, 2024 to install or provide written evidence of steps taken to complete installation of alternative exterior lighting fixtures on certain buildings on the property. The alternative fixtures should direct the light downward, rather than towards neighboring properties, or be modified, perhaps by installing a shield over the existing fixtures that directs the light downward. The Plan Commission previously reached consensus that the existing exterior lighting on certain buildings at W2730 County Road A South is adversely affecting neighboring properties.
The Plan Commission discussed the angle of the exterior light fixtures, noting that the site plan for the business shows that 90-degree wall pack lighting fixtures were to be installed on exterior walls of certain buildings, and it appears that 45-degree wall pack lighting fixtures may have been installed instead, thereby directing light out rather than down. Chair Huenink will send correspondence to the property owner prior to the next Plan Commission meeting.
The Plan Commission acknowledged that the Sheboygan County Sheriff's Department has not reported concerns to the Town about the existing lighting's traffic impact on State Road 32 and County Road A South.

13. Public hearings for:
    a. Request by Kenneth and Jodi Hilbelink rezonings at W4341 Dekker Road and parcel 59006061782 on Dekker Road:
    Chair David Huenink called the public hearing for Kenneth and Jodi Hilbelink to order at 9:24pm.
    The subject properties are located at W4341 Dekker Road (parcel 59006061781, 5.25 acres, zoned A-5) and parcel 59006061782 on Dekker Road (35.01 acres, zoned A-1). The request is to rezone 0.10 acres of 59006061781 from A-5 to A-1 and 0.10 acres of 59006061782 from A-1 to A-5.
    Chair Huenink asked for additional comments from the public three times. There were no comments from the public.

Motion by Roy Teunissen, seconded by David Mueller, to close the public hearing for Kenneth and Jodi Hilbelink at 9:25pm; the motion carried by unanimous voice vote.

b. Request by Brian Bruggink of Brian J and Julie K Bruggink Living Trust for a minor land division and rezonings of parcel 59006060331 on DeMaster Road and parcel 59006063682 on Kappers Road.
Chair David Huenink called the public hearing for Brian Bruggink to order at 9:26pm.
The subject properties are located at parcel 59006060331 on DeMaster Road (40.32 acres, zoned A-3) and parcel 59006063682 (0.15 acres, zoned P-2) on Kappers Road. The request is:
    (1) To create a new parcel by dividing 0.15 acres from parcel 59006060331 and rezone those 0.15 acres from A-3 to P-2.
    (2) To rezone parcel 59006063682 from P-2 to B-1.

Chair Huenink asked for additional comments from the public three times. A few members of the public asked that the request be explained in detail. Chair Huenink provided an explanation of the request.
Motion by Brody Stapel, seconded by David Mueller, to close the public hearing for Brian Bruggink at 9:30pm; the motion carried by unanimous voice vote.

14. Request by Kenneth and Jodi Hilbelink for rezonings at W4341 Dekker Road and parcel 59006061782 on Dekker Road:
Motion by Matthew Teunissen, seconded by Jack Stokdyk, to recommend that the Holland Town Board approve the request for rezonings by Kenneth and Jodi Hilbelink as shown on the plat of survey map submitted with the application, contingent upon Sheboygan County approval of the boundary line adjustment as shown on the aforementioned plat of survey.
The motion carried by unanimous roll call vote. Brody Stapel: Y; Roy Teunissen: Y; Matthew Teunissen: Y; Jack Stokdyk: Y; David Mueller: Y; Bryan Kaiser: Y; David Huenink: Y.

15. Request by Brian Bruggink of Brian J and Julie K Bruggink Living Trust for a minor land division and rezonings of parcel 59006060331 on DeMaster Road and parcel 59006063682 on Kappers Road:
The Plan Commission acknowledged that the purpose of this request is to exchange road right-of-way land to facilitate a road betterment project on DeMaster Road, and that per Holland Town Code 220-15F, parcel 59006060331 shall not be prohibited from future divisions for a period of 10 years if approved, whereas the primary intent of the proposed land division is to enable a public road right-of-way procurement by the Town of Holland.
Motion by Brody Stapel, seconded by Jack Stokdyk, to recommend that the Holland Town Board approve the request for a minor land division by Brian Bruggink as shown on the draft certified survey map submitted with the application, contingent upon Holland Town Board approval of the rezoning requests, and the request to rezone the proposed 0.15-acre parcel on DeMaster Road from A-3 to P-2 and parcel 59006063682 from P-2 to B-1. The Plan Commission recommends that Holland Town Board approval is also contingent upon:
    a. Land Division:
        (1) Receipt of a signed and recordable certified survey map that matches the draft map submitted with the application.
        (2) Holland Town Board and Village of Oostburg approval of the certified survey map, and upon that certified survey map being approved and executed by Sheboygan County.
        (3) Holland Town Board acknowledgment that the resultant parcels shall not be

prohibited from future land divisions for a period of 10 years, whereas the primary intent of the proposed land division is to enable a public road right-of-way procurement by the Town of Holland.

b. Rezoning:
   (1) Holland Town Board approval of the minor land division request.

The motion carried by unanimous roll call vote.

16. Review legal opinion and make recommendation to Board of Appeals:
On October 14, 2024, Town Attorney Eric Eberhardt provided a legal opinion to the Town that the proposed use of the dwelling at N2047 Pine Beach Road South complies with Holland Town Code §330-27 R-1 Single-Family Residence District. A Board of Appeals application to appeal the Town Attorney's interpretation that the proposed use of the dwelling at N2047 Pine Beach Road South complies with Holland Town Code §330-27 R-1 Single-Family Residence District was recently submitted by Attorney Ellen Andersen on behalf of David Valenti and Larry Britton.
Holland Town Code § 330-96 gives the Board of Appeals the power to hear and decide applications for interpretations of the zoning regulations and interpretations of the location of the boundaries of the zoning districts, after the Town Plan Commission has made a review and recommendation.
The Plan Commission reviewed materials included in the November 7, 2024 meeting packet, to include sections § 330-96, § 330-27., and § 330-9. of the Holland Town Code, a legal opinion from the Town Attorney about the proposed use of the property at N2047 Pine Beach Road South, and part of an application recently submitted to the Board of Appeals.
Motion by Jack Stokdyk, seconded by David Mueller, to recommend to the Town Board of Appeals that the Legal Opinion presented by the Town Attorney regarding this matter is correct in its interpretation and that:
1) The Owner's proposed use of the Property is not a commercial use.
2) That case law, general zoning principles, and public policy preclude the Town from prohibiting the Owner's proposed use of the subject property by its guests within the R-1 Zoning District. The motion carried by unanimous roll call vote.
A meeting of the Holland Board of Appeals is scheduled for December 4, 2024 at 7:00pm.

17. Public hearing for:
   a. Ordinance to Amend Holland Town Code Chapter 330 – Zoning:
   Chair David Huenink called the public hearing for proposed Ordinance 2024-09 to order at approximately 9:45pm. Chair Huenink asked for comments from the public three times. Janelle Kaiser read a public comment into the record sent by email from an individual who was not able to attend the meeting.
   A summary of the comments during this agenda item is provided as follows:
      (1) Varying opinions of the proposed ordinance to amend Chapter 330 of the Holland Town Code were provided. Some expressed clear opposition and requested that the ordinance not be acted on this evening. Many of the comments were posed as questions about the impact and intent of the proposed ordinance, while others suggested ways the proposed ordinance could be changed. Some expressed that the Town should not rush to adopt the proposed ordinance. There was comment that proper notice for the public hearing for the ordinance was not provided.
      (2) The proposed ordinance to amend Chapter 330 of the Holland Town Code currently includes adding a definition of "hospitality services" to Chapter 330 and adding "hospitality services" as a conditional use in the R-1 zoning district. The

public inquired about whether regulation of hospitality services in single-family residential zoning districts has been implemented by other governments in Wisconsin; some expressed concern about what precedent would be set by implementing these changes. Some said:

1. That hospitality services should not be allowed in the R-1 zoning district.
2. That the definition of hospitality services should be expanded to be more restrictive.
3. That the definitions in the Town's existing ordinance are clear and don't need to be amended.

(3) Discussion about the purpose of conditional use permits and how they function.
(4) Inquiry about whether an ordinance could regulate the maximum number of bedrooms in a single-family dwelling or limit the number of properties used for short-term rentals or hospitality services.
(5) Comment that the dwelling under construction at N2047 Pine Beach Road South does not meet the intent of the R-1 zoning district. The ordinance change would allow repeat instances of the aforementioned dwelling and its use and constitute illegal spot zoning.
(6) Comment that short-term rentals should not be allowed in R-1 zoning, and that any R-1 property in the Town could be a short-term rental as a result of the proposed ordinance being adopted.
(7) Comment that fees should be increased for short-term rental licenses or any future hospitality services conditional use permit applications.
(8) Request for clarification that any property zoned R-1 that conducts a hospitality services use, where such services constitute the primary use of the principal dwelling on the property, would be required to apply for a conditional use permit if the proposed ordinance were to be adopted by the Holland Town Board.
(9) Comment that while hospitality services does not fit as a conditional use in the R-1 zoning district, if any fee is charged to stay at a property on a short-term basis, it is allowed to operate as a short-term rental if proper licensure is obtained.

Motion by Brody Stapel, seconded by Matthew Teunissen, to close the public hearing for Ordinance 2024-09 to Amend Holland Town Code Chapter 330 – Zoning at 11:17pm; the motion carried by unanimous voice vote.

18. Ordinance to Amend Holland Town Code Chapter 330– Zoning:
Motion by Brody Stapel, seconded by Matthew Teunissen, to table action on proposed Ordinance 2024-09 Amending and Creating Provisions of Chapter 330 of the Code of the Town of Holland, Sheboygan County, Wisconsin; the motion carried by unanimous voice vote.

19. Town Agreement for a Temporary Permit to Allow an Accessory Building on a Parcel Without a Dwelling Present for Gerald and Jeanne Davies at N1586 Van Driest Lane:
Motion by Brody Stapel, seconded by David Mueller, to approve the Town Agreement for a Temporary Permit to Allow Accessory Buildings on a Parcel Without a Dwelling Present for Gerald and Jeanne Davies at N1586 Van Driest Lane as presented during the November 7, 2024 Plan Commission meeting; the motion carried by unanimous voice vote.

20. Termination of conditional use permit dated February 1, 2021 issued to David and Mary Gronik at N1025 Cole Rd, parcel 59006076560:

The Plan Commission previously reviewed the existing conditional use permit and assessor record for the property. A conditional use permit (CUP) for the property was issued to David and Mary Gronik in February 2021 to allow more than two accessory structures on the Premises, but not to exceed three accessory structures. The CUP required the permit holders to begin construction of the accessory buildings allowed by the permit within 3 years. Since construction deadlines required by the permit have expired and construction of the buildings has not commenced, the Plan Commission previously acknowledged that the permit is subject to termination.

As authorized by the Plan Commission, Janelle Kaiser sent a letter to the property owners on October 24, 2024 requesting their consent to waive the requirement for the Town to hold a public hearing prior to termination of the CUP. The letter was signed and returned by the property owners.

Motion by Jack Stokdyk, seconded by Roy Teunissen, to terminate the existing conditional use permit issued to David and Mary Gronik, recorded by the Sheboygan County Register of Deeds on February 18, 2021, at N1025 Cole Road (now known as W1761 Milford Track Lane) to allow more than two accessory structures on the Premises, but not to exceed three accessory structures, whereas the conditional use has not continued in conformity with the conditions of the permit, specifically condition 1.(c), which states, "The Petitioner shall start construction of the accessory structures within one (1) year of the date of the granting of this Permit and the accessory structures must be completed within three (3) years of the date of granting of this Permit. If these timelines are not complied with, this Permit is subject to termination unless an extension is granted by the Town of Holland Plan Commission."

The motion carried by unanimous roll call vote.

21. Conditional zoning and options for its use in the Town of Holland:
    No information to report.

22. Ongoing issues:
    a. Applications being processed:
       The Plan Commission acknowledged progress on the applications being processed.

23. Public input:
    a. Inquiry about possible future actions of the Plan Commission if conditions of the conditional use permit for W2730 County Road A South are not followed, specifically the adverse impact to neighboring properties as a result of the current exterior lighting on structures installed on certain buildings.
    b. Statement of appreciation of the Plan Commission's time.

24. Review/approve attendance records for previous meeting:
    Motion David Mueller, seconded by Bryan Kaiser, to approve the attendance records as presented; the motion carried by unanimous voice vote.

25. Adjourn:
    Motion Jack Stokdyk, seconded by Roy Teunissen, to adjourn at 11:25PM; the motion carried by unanimous voice vote.

Antoine, Hoeft & Eberhardt S.C.
ATTORNEYS AT LAW

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October 14, 2024

COPY

David Huenink, Town Chairman
Town of Holland
W3005 County Road G
Cedar Grove, WI 53013

Re: Use of Property at N2047 Pine Beach Road South, Town of Holland, WI

Dear Dave:

You asked my opinion regarding the use of the above property (the "Property") in the *R-1 Single Family Residence District*. The Property is owned by American Orthodontics Corporation ("Owner"), which manufactures and sells an array of products used in the orthodontics industry. The Owner's corporate headquarters is in Sheboygan, Wisconsin.

I. BACKGROUND FACTS.

You shared the following pertinent background facts which I have carefully considered:

The Property consists of a parcel of land situated along the west shore of Lake Michigan in the Town of Holland (the "Town") approximately nine miles from the Owner's corporate headquarters. The Owner razed two small houses on two adjoining lakefront lots, merged the two parcels, and is in the process of constructing one large new building. Sheboygan County approved the building under its Shoreland Zoning Ordinance as well as the private on-site well and septic systems. The Town Building Inspector approved the building plans for a single-family residence. Access to and from the Property is via a narrow private road.

The Owner states that guests will be allowed to stay on the Property without payment of any fees, costs, or the need to redeem any "reward points;" tours of the Owner's factory are available to guests, but not required as a condition of a stay; occupancy is expected to be on a seasonal (i.e., not year-round) basis between April and November; a typical stay is expected to last 3 - 4 days per group; one group will stay on the Property at a time; and a group consists of one or more dental/orthodontic professionals who practice together or American Orthodontics employees, possibly with their families.

Building plans show that the structure has a unique configuration and a large number of bedrooms (9). The kitchen on the premises includes a shared dining area with a large island with seating for nine (9) people. Guests will prepare their own meals as on-site food preparation is not provided by the Owner and prepared meals will not be brought in by the Owner. The Owner may give guests complimentary "Chamber Bucks" or coupons for use at area restaurants and/or sport/recreation venues, e.g., golf, skeet shooting.

Building plans show there is one central living room with seating for eight (8) people.

The Property has five and one-half (5-1/2) bathrooms. There is a half-bath serving the kitchen/living room area. One bedroom has a dedicated master bathroom. The other eight bedrooms share four (4) bathrooms, i.e., each group of four bedrooms is served by two designated bathrooms, like a family-style house.

The Owner will not have a representative staying on-site during guest visits but will have a team of people available to address any problems which may arise, e.g., plumbing.

According to the Owner's representative, "House Rules" will be posted on-site which guests are required to acknowledge in writing, along with signing a liability waiver form.

Eight parking spaces will be provided on the Property, consisting of one (1) single-car attached garage, one (1) driveway parking space, and six (6) outside parking spaces on the lot. These parking arrangements meet the Town ordinances for this Property. For purposes of this opinion, I have assumed that the Property also complies with all other Town codes and state laws, e.g., set-back, side-yard, building height, accessory structures, floodplain, etc., for property within the R-1 zoning district.

Neighbors and nearby residents have expressed concerns about and objections to the new building and its future use. They state that the proposed use constitutes a commercial use of the Property, prohibited within the R-1 zoning district. They also contend that the building is not a "single-family dwelling" under the Zoning Ordinance.

II. ISSUES PRESENTED.

A. Is the Proposed Use a Prohibited Commercial Use in the R-1 District?

In my opinion, the Owner's proposed use of the Property is not a commercial use. The word "*commercial*" is not expressly defined in § 330-9 (Definitions) of the Zoning Ordinance for the Town of Holland. Consequently, Wisconsin law directs that the word be given its common, ordinary and accepted meaning and usage, which is ascertainable by reference to a recognized dictionary. (§ 990.01(1), Wis. Stat.; Brown Cty. Human Servs. v. B.P., 2019 WI App 18, ¶12.)

The definitions of "*commercial*" in the CAMBRIDGE FREE ENGLISH DICTIONARY include "related to making money by buying or selling things" and "used for selling goods or providing services for money, rather than for personal use." (https://dictionary.cambridge.org/us/dictionary/english/commercial.) Also, BLACK'S LAW DICTIONARY, 245, (5th ed. 1979) defines "*commercial property*" as "[I]ncome producing property (e.g. office buildings, apartments, etc.) as opposed to residential property."

Taken together, these definitions indicate that commercial use of property involves charging fees or rent for goods or services for the purpose of making or intending to make a profit. Here, however, the Property will be used for housing guests who will pay *no fee* and have *no purchase obligation* to the Owner for staying there.

Support for the opinion that the proposed use is not a commercial use may be found in the Wisconsin Statues and Administrative Code regulating the use of "tourist rooming houses," "hotels," and "motels" as lodging places with sleeping accommodations when offered for pay by the property owner.

For example, under Ch. 97, Wis. Stats. (entitled **Food, Lodging and Recreation**):

- ***Tourist Rooming House*** is legally defined as any lodging place or tourist cabin or cottage where sleeping accommodations are **offered for pay** to tourists or transients. [§ 97.01(15k), Wis. Stat.; Wis. Admin. Code § ATCP 72.03(20).] This does not include a private boarding or rooming house, ordinarily conducted as such, not accommodating tourists or transients, or a hotel, or a bed and breakfast establishment. [§§ 97.01(15k)(a), (b) and (c), Wis. Stat.]; and

- ***Tourist or transient*** means a person who travels from place to place away from his or her permanent residence for vacation, pleasure, recreation, culture, business or employment. [§ 97.01(15f), Wis. Stat.; Wis. Admin. Code § ATCP 72.03(19).]; and

- ***Hotel*** means all places in which sleeping accommodations are **offered for pay** to transients, in 5 or more rooms, and all places used in connection therewith. [§ 97.01(7), Wis. Stat.; Wis. Admin. Code § 72.03(11).]

And, pursuant to Wis. Admin. Code Ch. ATCP 72 (entitled **Hotels, Motels, and Tourist Rooming Houses):**

- ***Motel*** means a hotel that furnishes on-premise parking for motor vehicles of guests **as part of the room charge,** without extra cost, and that is identified as a "motel" rather than a "hotel" at the request of the operator. [Wis. Admin. Code § ATCP 72.03(12).]

A common denominator among these laws is that they apply to lodging places, hotels and motels in which sleeping accommodations are offered by the owner **for rent or pay** to tourists or transients. But in this case the Property will be made available for use by the Owner's guests *without pay or any obligation.* Instead, occupancy will be based on a hospitality, not a profit, relationship between the Owner and guests in which guests are received with goodwill and welcome. Certainly, a residential property owner may allow others to use their property at no cost, including when the owner is not present.

Wisconsin courts have observed that while some commercial uses would clearly violate single-family zoning (e.g, a lakefront restaurant or a fuel dock for boats), other businesses conducted within a single-family dwelling may have little or no effect on neighboring property owners (e.g., permitted home occupations for gain -- accountant, architect, beautician), other commercial uses (e.g., internet activities, including online entertainer/podcaster creating and uploading content, day-trading stocks, selling items on Craigslist, and listing and selling the home itself on Zillow). (See, e.g., Forshee v. Neuschwander, 2018 WI 62, at n.2.)

Moreover, Wisconsin case law directs that in determining whether a property's use is as a single-family dwelling, the focus is on how the property is used by the occupants (i.e., residential use), rather than how it is used by the owner (i.e., commercial use). (Forshee v. Neuschwander, supra at ¶¶ 51, 55, 59, citing State ex rel. Harding v. Door Cty. Bd. of Adjustment, 125 Wis. 2d 269 (Ct. App. 1985), and Heef Realty & Invs., LLP v. City of Cedarburg Bd. of Appeals, 2015 WI App 23). Here, as in Forshee v. Neuschwander, occupants will buy their own food, cook their own meals, make their own beds, and recreate as the house location allows, just as the property owner would. (Id. at ¶¶ 8, 19.)

You informed me that some concerned town residents contend that the building will be used for commercial purposes because the Owner may receive financial gain resulting from their guests' stay on the Property. The financial gain or "consideration," the objectors maintain, is something other than a direct fee or room charge for overnight stays, such as an actual sale, or the expectation of a sale, of the Owner's products.

This argument ignores the fact that guests will not be limited to the Owner's current customers but will also include potential customers and prospective employees from whom no financial gain is assured. In my view, the mere possibility that a guest may someday purchase the Owner's products or be hired as the Owner's employee is too indirect, remote, and speculative to declare the building a prohibited commercial use.

For these reasons, I conclude that the proposed use of the Property is not commercial.

B. Is the Proposed Use a Permitted Residential Use in the R-1 District?

Concerned Town residents further contend that the proposed use of the property is contrary to the purpose and language of § 330-27 of the Town's Zoning Ordinance, regulating the R-1 Single-Family Residence District, for the following reasons:

- The R-1 District "*is intended to provide for single-family dwellings ...*" [§330-27 A.];
- Permitted uses in the R-1 District include "[*O*]*ne single-family dwelling.*" [§330-27 B.1.B.];
- "DWELLING, SINGLE-FAMILY" is defined as "*A detached dwelling designed for or occupied exclusively by one family.*" [§330-9];

- "FAMILY" is defined as "*One or more individuals occupying a dwelling unit and living as a single household unit.*" [§330-9]; and

- "HOUSEHOLD" is defined as "*A family living together in a single dwelling unit, with common access to and common use of all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit.*" [§330-9]

The flaw in the objectors' argument is that none of the above definitions of "Single-Family," "Family," or "Household" require that members of those units be *related* by blood, marriage, adoption, or in any other manner. As applied to this matter, the lack of such a *relatedness* requirement means that a disparate group of individuals -- unrelated by blood, marriage or adoption -- may comprise a "*family*" and, thus, occupy the Property as a single household unit with common access to and use of the dwelling's living and eating areas and all areas and facilities for the preparation and storage of food therein.

This reflects the incontrovertible fact that the family structure has undergone significant change in the past and family relationships and dynamics have shifted over time, so that the definition of a traditional "*family*" is far narrower than that of a modern family.

For example, a traditional family is typically defined as a nuclear family, consisting of a mother, father, and children. It is based on relationships of blood, marriage, and sometimes adoption. In contrast, a modern "family" includes many diverse types of family structures and cohabitation arrangements between individuals and their dependents, including, but not limited to, blended families, same-sex married couples, domestic partnerships, single-parent households, foster parents and foster children, grandparents raising children, guardians providing housing for their wards, and unrelated people with disabilities under the Fair Housing Amendment Act (FHAA) or the Americans with Disabilities Act (ADA) who live as a single household because of their disabilities along with their caregivers and personal attendants. Indeed, today there is not only one government-sanctioned form of a "family" relationship.

Finally, as observed by the Wisconsin Supreme Court in Forshee v. Neuschwander, supra at ¶ 16, "[P]ublic policy of the State of Wisconsin 'favors the free and unrestricted use of property.' Crowley v. Knapp, 94 Wis. 2d 421, 434, 288 N.W.2d 815 (1980). 'Accordingly, restrictions contained in ... zoning ordinances must be strictly construed to favor unencumbered and free use of property.' Id. (citing McKinnon v. Benedict, 38 Wis. 2d 607, 619, 157 N.W.2d 665 (1968)." (further citations omitted). "Consequently, in order to be enforceable, ... restrictions that limit the free use of property 'must be expressed in clear, unambiguous, and peremptory terms.' Id. at 435."

§ 330-27 and the other sections of the Town's Zoning Ordinance cited above do not clearly and unambiguously restrict occupancy of single-family dwellings in the R-1 Single-Family Residence District to members of a family or household related by blood,

marriage, or adoption. Therefore, it is my legal opinion that case law, general zoning principles, and public policy preclude the Town from prohibiting the Owner's proposed use of the subject Property by its guests within the R-1 Zoning District. [See Heff Realty and Investments LLP v. City of Cedarburg, supra at ¶ 10 (holding "*We must construe the Ordinance in favor of the free use of property and cannot impose time/occupancy restrictions or requirements that are not in the zoning scheme.*")

If you have any questions, please contact me.

Very truly yours,

ANTOINE, HOEFT & EBERHARDT, S.C.

Eric E. Eberhardt

EEE:dms

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November 27, 2024

Town of Holland, Board of Zoning Appeals Clerk
Janelle Kaiser
W3005 County Road G
Cedar Grove, WI 53013

RE: Appeal of Proposed Use: N2047 Pine Beach Road South

Dear Ms. Kaiser:

We represent Messrs. Dave Valenti and Larry Britton in the above-referenced appeal. This letter brief is submitted in advance of the December 4, 2024 hearing to explain why the Board of Zoning Appeals ("BOZA") should reverse the Town Board's interpretation of the R-1 zoning code and find instead that the proposed use of the AO House located at N2047 Pine Beach Road South violates R-1 zoning regulations.

I. Background: The Proposed Use of the AO House

The AO House is a corporate benefit for prospective customers and employees of American Orthodontics. Beginning in April of 2025, American Orthodontics will regularly offer the AO House as a short-term vacation to unrelated groups of customers and employees. While there, guests of the AO House must sign a liability waiver, rely on a team of American Orthodontics staff to support their stay, and they have the option to tour the American Orthodontics corporate facilities. The average stay is designed to be 3-4 days. The facility is intended to be a marketing, recruitment and retention tool to solicit new customers and to retain current customers and employees.

II. The Present Appeal

On October 14, 2024, the Town Board's attorney provided a legal opinion which opined that he believed proposed use of the AO House complies with R-1 zoning. This submission explains why that opinion is not persuasive, and why the BOZA has both the legal right and the obligation to overturn the Town Board's position on this matter.

Also on October 14, 2024, the Town Board adopted the Town Attorney's opinion into the public record. By doing so, the Town erroneously interpreted the R-1 zoning code to include the proposed use of the AO House. This is the interpretation that must be reversed.

On October 17, 2024, Messrs. Dave Valenti and Larry Britton appealed the Town's erroneous interpretation of the R-1 zoning code. The basis for the appeal is set forth in their application for appeal. A true and correct copy of the accepted appeal (as accepted on October 31, 2024) is attached.

III. What The BOZA May Consider

Town of Holland Code § 330-96 governs the BOZA's powers and duties. "The Board of Appeals shall have the following powers: . . . (4) Interpretations: to hear and decide applications for interpretations of the zoning regulations . . . after the Town Plan Commission has made a review and recommendation." The Plan Commission reviewed the Town's interpretation and recommended that the BOZA hear this appeal during the Plan Commission Meeting on November 7, 2024.

Thus, the BOZA must and should consider the Town's Opinion and determine whether it complies with the applicable zoning ordinances. The legal opinion adopted by the Town Board is not binding law or precedent that you are obligated to follow; rather, it is one attorney's interpretation of the law. The very purpose of BOZA's existence is to independently review that decision and to determine if it was appropriate under the mandatory ordinances.

This letter presents an alternate interpretation that must also be considered; like the legal opinion adopted by the Town Board, this submission is not the law, but is an alternate, proposed interpretation of the law. You may also use your common sense and everyday experience to weigh whether to **affirm** or **reverse** the Town Board's interpretation of the R-1 zoning code. This submission urges you to reverse.

IV. The BOZA should find that the AO House's proposed use violates R-1 zoning

The purpose of single-family residential use is in the name: it is for *families*, not corporations.

R-1 property may be used only one of three ways: as one single-family dwelling, home occupation, or a public park of less than two acres without any structures. Town of Holland Code § 330-27(B)(1). A single-family dwelling is "[a] detached dwelling designed for or occupied exclusively by one family." Code § 330-9. A dwelling, in turn, is "[a] building designed or used as a residence, but does not include boarding houses, hotels, motels, tents, or cabins." *Id.* And a "residence" requires "living in a given place for some time." *Residence*, BLACK'S LAW DICTIONARY (12th ed. 2024). It follows, therefore, that a "single-family dwelling" is a single home for a single family who must live in the residence for some time.

The AO House fails these simple criteria. It is undisputed that the AO House has nine bedrooms and five and one-half bathrooms. It is undisputed that the AO House will not be limited to guests who are families that live together. And it is undisputed that guests will not stay long: only an average of 3-4 days at a time. There is no question that the AO House will not be used exclusively by one family. These aspects violate R-1 zoning on their face.

Further, it is undisputed that the purpose of the AO House is to retain and recruit customers and employees; not to support families. Only customers and employees of American Orthodontics

may stay. These guests will have to sign liability waivers and have the option (and, perhaps, the obligation) to tour the AO facility. The purpose and text of the R-1 single-family residentially zoned district does not permit the corporate, commercial suggested use of the AO facility in an R-1 zone, which designates property for the sole purpose of providing families with a long-term place of abode.

The Town's Opinion asserts three reasons why the AO House seems to comply with R-1 zoning; all three reasons are wrong.

First, the Town's Opinion opines that AO guests will use the house in the same way a family would, but the Opinion takes too narrow of a view of what constitutes a family. No ordinary house guest must sign a waiver to visit friends or family in their residence. No ordinary house guest is attended to by a team of support staff. No ordinary house guest must tour a corporate facility. Although the AO House may offer *some* services that mimic residential use (such as preparing meals), the clear purpose of this facility is for AO to secure new customers and retain employees—this purpose sets AO's guests apart for an express, commercial purpose in lieu of a residential purpose.

Second, the Town's Opinion compares the AO House's use to *Forshee v. Neuschwander*, 2018 WI 62, 381 Wis. 2d 757, 914 N.W.2d 643, but that case is distinguishable in two, significant respects. As primarily explained in Attorney Susan LaBudde's brief, *Forshee*'s reasoning is only set forth in a nonbinding "lead" opinion, which may not be relied on as law. And second, even if *Forshee* is considered persuasive, it is still distinguishable from the AO House on the facts. In *Forshee*, the Court found that a covenant could not be enforced because the phrase "commercial activity" could have covered different, reasonable meanings; therefore, the lead opinion thought it was permissible to invoke public policy factors in striking down the ordinance. Here, however, the ordinance at issue is unambiguous. The operative term at issue is the definition of a "family." The term "family" is clear on its face, not subject to more than one reasonable interpretation, and therefore must be applied as is. R-1 zoning is unambiguously limited to single-family residential use and must be limited as such, unlike how the lead opinion interpreted the phrase "commercial activity" in *Forshee*.

Third, the Town's Opinion suggests that the definition of "family" *is* open to interpretation; the Town's Opinion proposes that the concept of family is so broad that even coworkers can be considered "family." No one needs a dictionary to know that such an opinion turns the commonsense definition of "family" on its head. Nor would anyone be fooled into thinking that unrelated customers or coworkers are a family, even in today's day and age, where the definition of a nuclear family might arguably be more expansive. It is undisputed that the AO House would be used by unrelated customers and employees who are not family, and thus, inappropriate in an R-1 zone. The Town Board's interpretation should be rejected and reversed.

* * *

It is now your decision whether to approve or reject the proposed use of the AO House. We believe the law requires you to reverse the Town Board's erroneous interpretation of the R-1 zoning code.

Respectfully submitted,

Ellen E. Anderson

EEA:eea
Enclosure

cc: Attorney Michael J. Bauer
Hopp, Neumann, & Humke LLP
via email: mike.bauer@hopplaw.com

Attorney Eric E. Eberhardt
Antoine, Hoeft & Eberhardt S.C.
via email: eberhardt@wislawfirm.com

BOZA Brief in Opposition to Town Legal Opinion [QBLLP-ACTIVE.FID45031816]

From: ellen.anderson@quarles.com
Received Wednesday November 27, 2024 11:19 am
To: clerk-treasurer@townofholland.com <clerk-treasurer@townofholland.com>
CC: Michael Bauer <mike.bauer@hopplaw.com>, Eric Eberhardt <eberhardt@wislawfirm.com>
Subject: BOZA Brief in Opposition to Town Legal Opinion [QBLLP-ACTIVE.FID45031816]
Attachments: 2024.11.27 EEA to Town Clerk.pdf
Associations: Town of Holland - Board of Appeals [15792]

Hi Janelle, I'm writing to share my clients' brief in opposition to the Town's legal opinion. Please be sure to include this in the packet that will be distributed to the BOZA members, as discussed with Attorneys Bauer and Eberhardt.

Further, please note that we anticipate calling the following witnesses during the hearing on December 4:

- Dave Valenti
- Larry Britton
- Dave Huenink
- Eric Eberhardt

Wishing you and your family a happy Thanksgiving.

Ellen

Quarles

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November 27, 2024

Janelle Kaiser
Town of Holland, Board of Zoning
Appeals Clerk
W3005 County Road G
Cedar Grove, WI 5013

Re: Response to Board of Appeals Application filed by Ellen E. Anderson o/b/o Messrs. David Valenti and Larry Britton

Dear Ms. Kaiser:

We represent American Orthodontics in the above-referenced matter. This letter is being submitted on behalf of American Orthodontics in support of the Town Board's decision regarding the property located at N2047 Pine Beach Road South, Town of Holland, Wisconsin the ("**Property**").

I. Introduction

American Orthodontics has nearly completed construction of a home, after permits were issued by the Town of Holland in 2023 and notices were provided. The use of this property is residential, not commercial. At the Property, American Orthodontics ("**AO**") will not profit from rent, it will not host business meetings, it will not throw parties, it will not staff the home with a chef, housekeeping service or other support staff or any person to provide on-property assistance to the occupants, although there will be a number to call in the event of an emergency. This is not a resort. It does not require the occupants to tour the corporate facility. This is simply a home at which American Orthodontics employees or customers, potential employees or customers, and their families may stay. The focus must be on the use of the property by its occupants. And, while this home is owned by a company (there is no prohibition on this) and will not be occupied by a single family for years on end (there is no requirement that it must), its use will be consistent with that of a typical family.

This house and the other houses located in Sheboygan County and owned by AO are very different than other properties owned by AO entities known as "Vacation Destinations". Those properties are for a very different use and use a point system.

II. Statement of Facts

On May 17, 2022, American Orthodontics Corp ("**AO**") purchased the property located at N2047 Pine Beach Road South in the Town of Holland, Sheboygan County, Wisconsin, Tax Parcel Number 59006078811 (the "**Property**"). The Property initially consisted of two lots, each with a house located on it. Those lots were combined into a single lot on October 18, 2023.

On November 16, 2022, AO sent a letter to six resident families, including Town resident, John Dickmann, regarding AO's plan to raze the two buildings located on the lots and construct a single- family home (the "**Project**"). That letter addressed a then-existing aging well system shared by the resident families and the Property which AO planned to abandon, remove and replace with three new wells to serve the properties being served by the then-existing shared well system. The cost of the replacement wells was substantial and paid entirely by AO. Thus, AO's intent to demolish the existing homes and construct a new single- family home of the Property was disclosed to these residents as early as November 16, 2022.

In preparation for the construction, AO demolished the existing two residences located on the Property in January 2023.

In early 2023, AO commenced applying for permits with the Town of Holland ("Town") for the construction of the new single-family residence. On September 13, 2023, AO's contractor, Scot Thiel, filed for permits through the Online Building Permit System. The filing clearly states that the Zoning District is R-1, the area involved is a 5,182 square foot building. The construction plans were approved, and a building permit was issued on September 29, 2023.

Construction of the new residence commenced in 2023 after issuance of the building permit. Construction likely will be completed within the next two months. The new residence will consist of nine bedrooms, five and one-half bathrooms and shared kitchen, dining and living areas. Upon completion of construction, the Property will be used by AO guests for short stays, mainly on weekends, generally in spring, summer and fall. AO does not charge its invitees a fee for the use of the Property, provide meals to its guests or require that guests visit its facility or even meet with AO representatives. AO may, however, provide its guests with complimentary "Chamber Bucks" or coupons for use at area restaurants and/or other local venues. House rules will be posted onsite as well as contact information for an AO representative.

At the May 13, 2024, June 10. 2024, August 12, 2024, September 9, 2024, October 14, 2024 and November 11, 2024 Town of Holland Board of Supervisors meetings several residents, including John Dickmann, appeared and commented that, among other things, the project is clearly a non-conforming business use not permitted in the R-1 zoning district. They asked that the Town halt construction. None of the residents, however, backed up their statements with an analysis of applicable law. The Town never halted construction. As a result, the home stands, nearly complete.

III. Analysis of Applicable Law

The Property is located in the R-1 zoning district. Per Town of Holland Ordinance §330-27B(1)(c), one "single-family dwelling" is a permitted use in the R-1 Zoning District. §330-9, Definitions, defines "Dwelling, Single-Family" as a "detached dwelling designed for or occupied exclusively by one family" and "Family" as "one or more individuals occupying a dwelling unit and living as a single household unit". "Household" is defined as a family living together in a single dwelling unit, with common access to and common use of all living and eating areas and all areas and facilities for the preparation and storage of food within the dwelling unit".

While "Family" may conjure up the notion that the persons living in the dwelling unit must be related in some familial manner, this certainly is not the case. Wisconsin case law is clear that unless expressly required by statute, parties occupying a residence as a Household are not required to be related to each other. In a proceeding of review by certiorari, the Circuit Court for Milwaukee County rendered a judgment reversing a decision of Board of Appeals of the Village of Whitefish Bay. The Village Board of Appeals affirmed an order of the Village building inspector directing a religious corporation to discontinue its use and occupancy of a residence by a group of priests and lay brothers living together in a single housekeeping unit. In its decision, the Wisconsin Supreme Court held that a group of priests and lay brothers living together in a single housekeeping unit constituted a family within the applicable zoning ordinance. *Missionaries of Our Lady of La Salette v. Village of Whitefish Bay*, 267 Wis. 609, 66 N,W,2d 627 (1954). In this case, the property in question was located in a zoning district with a residential permitted use. The property consisted of a twenty-room house which included ten bedrooms and an attached four car garage. Section 14.02(11) of the Whitefish Bay Zoning Code defined a "family" as "one or more individuals living, sleeping, cooking or eating on premises as a single housekeeping unit." In its discussion, the Supreme Court noted that restrictions in a zoning ordinance must be strictly construed against the party claiming their benefit in favor of free and unrestricted use of property. The Court noted that if Whitefish Bay meant to exclude unrelated occupants of a house from the definition of "family" it should have expressly done so. In the absence of an express limitation, the Court held that it is clear that it was not the intent to exclude unrelated occupants from the definition of "family".

Wisconsin courts have consistently held that "ordinances must be strictly construed to favor unencumbered and free use of property." *Crowley v, Knapp*, 94 Wis. 2d 421, 434-35, 288 N.W.2d 815, 822 (1980).

As noted above, the definition of "Family" in the Town of Holland Zoning Code does not require that the persons occupying the Property be related to each other. It simply provides that the individuals occupying the unit live as a single household unit. Therefore, pursuant to the applicable case law, the use of the Property by the guests of AO will be considered a Family under the Town of Holland Zoning Code as they are one or more individuals occupying a dwelling unit and living as a single household unit.

Several residents have alleged that AO's intended use is not allowed in the R-1 zoning district because the use is commercial in nature. They allege that the use is considered commercial because AO may benefit financially from allowing others to stay in the Property.

They allege that while AO may not be collecting rent, it may be getting other financial benefits from allowing guests to stay at the Property.

The focus at several Town Board meetings on AO's ownership and conjecture about potential benefits to AO, financial or otherwise, is misplaced. It is well-settled law in Wisconsin that in determining whether a use is commercial, you examine the use of the property by the people occupying the property. If the occupants are using the property for residential purposes, the use is residential. *Vilas County v. Bowler*, 2019 WI App 43 ¶¶ 28-30 (citing *State ex rel. Harding v. Door County Board of Adjustment*, 125 Wis. 2d 269, 371 N.W.2d 403 (Ct. App. 1985), *Heef Realty & Investments, LLP v. City of Cedarburg Board of Appeals*, 361 Wis. 2d 185. It does not matter if the owner of the property is charging rent as the owner is not the occupant of the property. It doesn't matter how the owner classifies the property for income tax purposes. The classification of the use is determined solely by the use of the property by the actual occupants of the property. To hold otherwise would result in any rental of a residential dwelling, including one-year leases of residential property, being classified as a commercial use and, therefore, not allowed in most residential districts.

During several of the Town Board meetings, Town residents alleged that AO is receiving a financial benefit from allowing persons to stay at the Property. Even if that were true, the use by the occupants of the Property is residential in nature and per well-settled Wisconsin law, usage is determined by the party occupying the property, not by the non-occupant owner.

Also note that the Town of Holland Code does not require a specific period of time for the use to be classified as residential. Attorney Ellen Anderson, who represents Town residents David Valenti and Larry Britton, alleged at the October 14, 2024, Board of Supervisors meeting that in order to qualify as a single-family residential use, the family must stay in the residence for some time. She, however, failed to provide any support for her position. The Town of Holland Code does not require a specific length of stay in order to qualify as single family residential use. *See also Bowler* ¶ 30.

Simply put, the Property and its occupants' use of it fits the single-family R-1 zoning parameters. AO's ownership of the Property is not relevant. The home, indeed, is a single-family residence. Again, the parties living in a residence do not need to be related. Such a requirement would be ridiculous. An occupant could not live with a friend. The Town of Holland Code requires that the persons living together have common access to and use of all living, eating, food preparation and storage areas of the dwelling. This home meets that requirement. The duration of occupancy by any occupant does not matter.

A reevaluation of the Town's zoning determination could have ranging consequences. Consider, for example, would the Town want to restrict an owner of a single-family residence, say a vacation home, from permitting other family members or friends or co-workers from using their home, whether "rent" is paid or not? That's all this is akin too – owner permitted use of a residence for residential purposes, like sleeping and eating.

IV. Conclusion

It is clear from the Town of Holland Code and the case law that intended use of the Property is an allowed use. The Board of Appeals Application filed by Ellen E. Anderson o/b/o Messrs. David Valenti and Larry Britton must be denied.

Very truly yours,

GODFREY & KAHN, S.C.

Daniel J. Blinka

DJB:rc

32179443.1

KeyCite Yellow Flag - Negative Treatment
Distinguished by Rowatti v. Gonchar, N.J., November 20, 1985

267 Wis. 609
Supreme Court of Wisconsin.

MISSIONARIES OF OUR LADY OF LA SALETTE, a Wis. corporation, Respondent,
v.
VILLAGE OF WHITEFISH BAY, Board of Zoning Appeals, Appellant.

Nov. 9, 1954.

Synopsis

In a proceeding of review by certiorari, the Circuit Court for Milwaukee County, William F. Shaughnessy, J., rendered judgment reversing decision of Board of Appeals of village of Whitefish Bay affirming an order of the village building inspector directing a religious corporation to discontinue its use and occupancy of a residence, and the Board of Appeals appealed. The Supreme Court, Steinle, J., held that a group of priests and lay brothers living together in a single housekeeping unit constituted a family within the zoning ordinance and did not constitute a prohibited convent.

Affirmed.

West Headnotes (8)

[1] **Zoning and Planning** Strict or liberal construction in general

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(A) In General
414k1203 Strict or liberal construction in general
(Formerly 414k232, 268k601(18))

Restrictions contained in zoning ordinance must be strictly construed.

2 Cases that cite this headnote

[2] **Zoning and Planning** Operation and effect in general

Zoning and Planning Enforcement of Regulations

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(A) In General
414k1214 Operation and effect in general
(Formerly 414k234)
414 Zoning and Planning
414XI Enforcement of Regulations
414k1765 In general
(Formerly 414k801, 268k631(1))

A violation of zoning ordinance occurs only when there is a plain disregard of its limitations imposed by its express words.

2 Cases that cite this headnote

[3] **Zoning and Planning** One-family, two-family, or multiple dwellings

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(B) Architectural and Structural Designs
414k1229 One-family, two-family, or multiple dwellings
(Formerly 414k256, 268k601(22))

Zoning ordinance defining family as one or more individuals living, sleeping, cooking or eating on premises as a single housekeeping unit was not intended to restrict use and occupancy to members of single family related within degrees of consanguinity or affinity.

10 Cases that cite this headnote

[4] **Zoning and Planning** One-family, two-family, or multiple dwellings

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(B) Architectural and Structural Designs
414k1229 One-family, two-family, or multiple dwellings
(Formerly 414k256, 268k601(22))

A group of priests and lay brothers merely living together in a single housekeeping unit constituted "family" within zoning ordinance restricting use of buildings to single family dwelling and defining family as one or more individuals living, sleeping, cooking or eating on premises as single housekeeping unit.

13 Cases that cite this headnote

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[5] **Zoning and Planning** As question of law

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(A) In General
414k1201 As question of law
(Formerly 414k231, 268k120, 268k601(18))

The construction of a zoning ordinance, under the facts, is a question of law for the court.

3 Cases that cite this headnote

[6] **Zoning and Planning** Strict or liberal construction in general

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(A) In General
414k1203 Strict or liberal construction in general
(Formerly 414k232, 268k601(18))

Zoning ordinance restrictions on use of property are strictly construed.

4 Cases that cite this headnote

[7] **Municipal Corporations** Intent

Statutes Intent

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k120 Construction and Operation
268k120(3) Intent
(Formerly 268k120)
361 Statutes
361III Construction
361III(A) In General
361k1071 Intent
361k1072 In general
(Formerly 361k181(1))

Ordinances, like statutes, are to be construed according to their intent.

2 Cases that cite this headnote

[8] **Zoning and Planning** Churches and religious uses

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(C) Uses and Use Districts
414V(C)1 In General
414k1251 Churches and religious uses
(Formerly 414k278.1, 414k278, 268k601(22))

The living, sleeping, cooking and eating in single housekeeping unit arrangements, by group of individuals who were priests and lay brothers of religious organization, directed by their rules and by their superiors to do no more on premises except reside there, and to carry on their religious, educational and charitable work away from premises, did not constitute "convent" within zoning ordinance.

14 Cases that cite this headnote

****628** ***610** This is an appeal from a judgment entered February 10, 1954, in the circuit court for Milwaukee county in a proceeding of review by *certiorari*, reversing the decision of appellant, Board of Appeals of the village of Whitefish Bay, which had affirmed an order of the Village Building Inspector directing the respondent, Missionaries of Our Lady of La Salette, a Wisconsin nonstock corporation, to discontinue its use and occupancy of a residence at 5270 North Lake Drive, Whitefish Bay, Milwaukee county, for reason that the same is in violation of the village zoning ordinance.

Thje following facts are established of record:

By zoning ordinance the village of Whitefish Bay is divided into seven districts. They are: District 1.—Lake Shore Residence District; District 2.—Single-Family Residence District; District 3.—Two Family Residence District; District 4.—Public Buildings and Grounds District; District 5.—Apartment District; District 6.—Business District; District 7.—Automobile Parking District.

Section 14.04 of the zoning ordinance restricts the use of buildings or premises in district 1 to the following: (a) Single family dwellings; (b) noncommercial greenhouses, ***611** nurseries, and gardens; (c) uses and buildings accessory to those enumerated above. However, not exceeding one person may, in a dwelling used as his residence—1. Rent out not more than two rooms from the premises designated for one family, or furnish table board to not exceeding four persons; 2. carry on a customary home occupation provided no persons other than members of his own household are employed therein; 3. carry on a profession, provided that the office of a dentist shall not contain more than one dentist's chair and a

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physician's office shall not contain more than one consultation or examination room.

Section 14.07 of the zoning ordinance permits the use in district 4 of the following: (a) Armories but not including stables for horses; (b) churches including accessory rectories, auditoriums and *convents*; (c) public buildings and grounds; (d) schools, including accessory buildings, play grounds, athletic fields, stadiums, gymnasiums and field houses; (e) hospitals and ****629** sanitariums; (f) sewerage ans water pumping stations and water storage tanks; (g) clubs, lodges, community houses, and homes for the aged or dependent, except those, the chief of activity of which is a service customarily carried on as a business; (h) uses and buildings accessory to those enumerated in subsections (a) to (g) in this subsection, including single family dwellings and private garages for the sole use of the owner and his or its officers, members of their families and employes, but not including any duplex or double house, store, trade, business or industry.

Section 14.02(11) of the zoning ordinance defines the word '*family*' as follows: 'A family is one or more individuals living, sleeping, cooking or eating on premises as a single housekeeping unit.'

The premises at 5270 North Lake Drive are located in district 1 and consist of a tract having a frontage on Lake Drive of 230 feet, and a depth of 590 feet to Lake Michigan, and upon which is situate a twenty room (10 bedrooms) ***612** residence with fourcar garage attached. The tax assessment value is $65,000.

Fee title to the premises is in the respondent. Amongst the declared corporate purposes of the respondent are: (a) To own and occupy, as a residence, a home in the county of Milwaukee; (b) to assist wherever and whenever possible parish pastors in serving Roman Catholics in the state of Wisconsin and to promote Roman Catholic Missions; (c) to do all things necessary, proper and desirable toward the promotion of education, charity and religion and perform charitable and benevolent acts of all kinds and description.

Membership in the respondent corporation is limited to members of Reversend Saletyni Missionaries, an Illinois corporation, organized for religious purposes.

A description of the precise use and occupancy of the property is contained in the trial court's written decision, wherein, upon undisputed evidence, it is found 'that at the present time three priests and two lay brothers live in the home out of a total of twenty priests who reside in the midwest and who serve other missions and live at other places of residence in this section of the country. All of the priests and lay brothers residing upon the premises in the village of Whitefish Bay are subject to Father Czelusniak as their Superior. The duty of the two lay brothers includes helping to keep the house and kitchen in order, cooking, serving food, and all of the people living in the house partake of meals at the same table served by one kitchen. The duty of the Superior was described as supplying everything material necessary for living for the entire household, and also spiritual advice and direction. Each person living in the house has his separate room and the place is used as a private residence and for no other purpose. The members of the order who reside upon the premises are authorized in the archdiocese of Milwaukee to help parishes with missions conducted within parish ***613** churches away from the premises, retreats, sick calls and administration of sacraments, all outside and away from the premises used as a residence. It is not intended to use the premises for a residence for more than six priests and two lay brothers at any time in the future. The plaintiff will not manufacture anything on the premises nor operate any printing presses or make any spirituous liquors. No alterations in the building are planned or contemplated, and all decisions as to the manner in which the house operates are the responsibility of the Superior. A chapel has been set aside in the home for private religious devotions of the members of the household to which the public is not admitted.'

The Building Inspector's order which was affirmed by the board of appeals contains findings which include the following:

'My investigation indicates that this property was occupied by the Uihlein family as a residence for many years and was then sold in 1947 to Central Office Buildings, Inc. and was not occupied while owned by said corporation. Following the transfer to the Missionaries of Our Lady of La Salette, a Wisconsin corporation, the premises were and are now used and occupied ****630** by this corporation housing several priests, and I find such use and occupancy violates section 14.04 of the zoning laws of the village of Whitefish Bay.

'The Missionaries of Our Lady of La Salette, a Wisconsin corporation, could properly use and occupy property in the village of Whitefish Bay in district 4, described in section 14.06 of the zoning laws of the village of Whitefish Bay.' (N. B. Restrictions as to district 4 are embraced in sec. 14.07 of the zoning code.)

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Attorneys and Law Firms

Harry J. Hayes, Village Atty., Maxwell H. Herriott, Special Atty., Milwaukee, for appellant.

Richard B. Surges, Milwaukee, for respondent.

Opinion

***614** STEINLE, Justice.

The question presented is whether the use and occupancy conforms to that permitted by the ordinance in the district where the premises are located. The facts are not in dispute. There is no challenge of the validity of the zoning ordinance with respect to its enactment. The classification prescribed by the ordinance is not unreasonable.

The appellant strongly contends that the use and occupancy of the premises by the respondent is not that of a family such as is only permitted in district 1, but that in fact its use is that of a convent, permitted only in districts 4, 5, and 6.

[1] **[2]** Restrictions contained in a zoning ordinance must be strictly construed. A violation of such ordinance occurs only when there is a plain disregard of its limitations imposed by its express words. In State ex rel. Bollenbeck v. Village of Shorewood Hills, 1941, 237 Wis. 501, 507, 297 N.W. 568, 571, this court quoted with approval from Brown v. Levin, 1929, 295 Pa. 530, 531, 145 A. 593, as follows:

> "Covenants restricting the use of land are construed most strictly against one claiming their benefit and in favor of free and unrestricted use of property; a violation of the covenant occurs only when there is a plain disregard of the limitations imposed by its express words."

and stated that 'This rule has been extended to restrictions in zoning and building ordinances.' See Chamberlain v. Roberts, 1927, 81 Colo. 23, 253 P. 27; Town of Darien v. Webb, 1932, 115 Conn. 581, 162 A. 690; and Landay v. MacWilliams, 1938, 173 Md. 460, 196 A. 293, 114 A.L.R. 984. This court in its opinion in the Bollenbeck case, 237 Wis. at page 508, 297 N.W. at page 571, then declared:

> 'Upon the foregoing authorities, it must be held that building restrictions, whether contained in deeds or ordinances, must be strictly construed.'

[3] For the purposes of its zoning code the legislative body of Whitefish Bay has in precise language defined the term 'family.' It declares that a family is one or more individuals ***615** living, sleeping, cooking or eating on premises as a single housekeeping unit. Had it been the pleasure of the legislative body when defining the word 'family,' to have excluded in the district any dwelling use of premises there situated, by a group of individuals not related to one another by blood or marriage, it might have done so. Since there is complete absence of any such limitation, it seems clear that it was not the legislative intent to restrict the use and occupancy to members of a single family related within degrees of consanguinity or affinity.

It is to be noted that aside from the definition of the term 'family' in the ordinance, the ordinary concept of that term does not necessarily imply only a group bound by ties of relationship.

'Family' is derived from the Latin '*familia*.' Originally the word meant servant or slave, but now its accepted definition is a collective body of persons living together in one house, under the same management and head subsisting in common, and directing their attention to a common object, the promotion of their mutual interests and social happiness. ****631** Stafford v. Incorporated Village of Sands Point, 1951, 200 Misc. 57, 102 N.Y.S.2d 910; 16 Words & Phrases, pocket part.

In Carmichael v. Northwestern Mutual Benefit Ass'n, 1883, 51 Mich. 494, 16 N.W. 871, 872, the court said:
'Now this word 'family,' contained in the statute, is an expression of great flexibility. It is applied in many ways. It may mean the husband and wife, having no children and living alone together, or it may mean children, or wife and children, or blood relatives, or any group constituting a distinct domestic or social body. It is often used to denote a small select corps attached to any army chief, and has even been extended to whole sects, as in the case of the Shakers.

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'We discover nothing in the statute implying a narrow sense, and we should not be inclined to attribute one where the result would cause injustice.'

***616** It is not within the court's province to add or detract from the clear meaning that the Village Board has expressed in its own definition of the word 'family.' To us it seems plain that the legislative body did not intend to restrict the use of premises in district 1 only to persons related by blood or marriage.

[4] Does a group of priests and brothers living together in a single housekeeping unit constitute a family within the definition of the ordinance? The findings of the building inspector indicate that the respondent owns the property and uses it to house several priests. The term 'to house' is not explained in the order or report of the building inspector. There is nothing of record by way of evidence or inference which contradicts the testimony presented by the respondent that the use of the premises is to be confined entirely to residential purposes for priests and brothers—presently five and in the future not more than eight—who do and will live, sleep, cook and eat on the premises as a single housekeeping unit. At the premises they engage in no business of a commercial character; no lectures, missions, services, etc., are held for the public. The group merely lives upon the premises. Living includes, of course, the right of everyone who chooses, —lay or religious person,—to engage in spiritual devotion, separately or in conjunction with other members of the family, in the home. In construing a zoning ordinance we perceive no reasonable distinction in a room set apart in a residence for use as a chapel as compared to one devoted to purposes such as ballroom, music room, conservatory or recreation room, which uses undoubtedly would be permitted although not specified in the ordinance. The work of those of the group not assigned to household duties takes them away from the premises. The arrangement appears to be no different than were a group of school teachers, nurses, etc., in some collective capacity, to acquire the premises, use the same as a residence for the group, and pursue their avocations ***617** away from the place. Such use in our opinion would be permitted by the terms of the ordinance. Those presently occupying the premises do not, in light of the purposes of the ordinance, lose their individuality by virtue of their membership in the religious organizations.

It does not appear that the residential use and occupancy of the premises by the respondent as revealed in the record violates the letter or spirit of section 14.04 of the zoning ordinance.

Appellant contends that respondent's arrangement upon the premises constitutes a 'convent,' the use of which is permitted only in districts 4, 5, and 6. Section 14.07 of the ordinance specifically permits in district 4 the use of property for churches including rectories, auditoriums and *convents*. That the Village Board is empowered to restrict the location of convents to districts other than residential is not challenged.

In this regard the specific question with which we are confronted is: Does the living, sleeping, cooking and eating in a single housekeeping unit arrangement, by a group of individuals who are priests and brothers of a religious organization, directed ****632** by their rules and by their superiors to do no more on the premises except reside there, and to carry on their religious, educational and charitable work away from the premises, constitute a 'convent' within the meaning of the ordinance?

Obviously, the Building Inspector classified the use of the premises as a convent, when, in his order, he indicated that respondent could properly use and occupy property in district 4. The board of appeals by its affirmance of the Building Inspector's order made like finding.

[5] The construction of the ordinance under the facts of record is a question of law. State ex rel. Morehouse v. Hunt, 1940, 235 Wis. 358, 291 N.W. 745.

***618** **[6]** We are bound under the rule of State ex rel. Bollenbeck v. Village of Shorewood Hills, supra, to give a strict construction to the restriction in question.

This court has refused to apply a literal construction of a zoning ordinance in several cases, stating: 'Although the letter of the ordinance is as stated, the letter need not necessarily be applied. State ex rel. Schaetz v. Manders [1931, 206 Wis. 121, 238 N.W. 835]. 'The letter killeth but the spirit giveth life.'' State ex rel. Morehouse v. Hunt, supra [235 Wis. 358, 291 N.W. 750].

[7] Ordinances, like statutes, are to be construed according to their intent. See State ex rel. Jackson v. Leicht, 1939, 231 Wis. 178, 285 N.W. 335.

The term 'convent' is not defined by the ordinance. Counsel for appellant directs attention to the fact that the word 'convent' is epicene, and that in Webster's New International Dictionary, second edition, unabridged, the term is defined as:

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'An association or community of recluses devoted to a religious life under a superior; a body of monks, friars or nuns, constituting one local community;—now usually restricted to a convent of nuns.

'A house or set of buildings occupied by a community of religious recluses; a monastery or nunnery;—now usually restricted to a nunnery.'

Counsel also point out that the same dictionary defines a 'monastery' as:

'A house of religious retirement, or of seclusion from the world for persons under religious vows, especially monks; a convent;—rarely such a house for women.'

The dictionary defines the word 'recluse' as: 'A person who lives in seclusion, as a hermit or a monk.' The word 'monk' is defined as 'one who takes the monastic vows.' ***619** The term 'friar' implies monastic living. 'Monastic' pertains to 'monastery and religious seclusion.'

It appears from the foregoing that a convent is essentially a place where men or women bound by vows in a religious organization live a community life in seclusion or retirement upon the premises.

[8] The record before us in no particular indicates that the individuals occupying the premises in question live there as recluses, or in seclusion or retirement. The evidence is undisputed that their vocational activities, except for ordinary personal and household duties, are directed entirely to situations and places away from the premises. The ministry is one of the learned professions. It appears that these professional men pursue their calling in places away from their home, as usually do others of a profession, as lawyers and doctors.

While it may be said that a convent is a place where persons bound by religious vows and under orders, dwell,—every place occupied as a dwelling by persons bound by religious vows and under orders is not necessarily a convent. The distinguishing characteristic obviously is the use for seclusion or retirement.

Here, the use is exclusively for ordinary residential purposes, no other. It is a use hereinbefore found to be permitted in district 1 by the ordinance. We are not able to declare that the respondent's use of the premises as appears from the record is that ****633** of a convent such as is permitted only in districts 4, 5, and 6. We cannot find that the use and occupancy is not within the letter or spirit of the ordinance. Should it become the legislative desire to further restrict the meaning of the word '*family*,' or enlarge upon the concept of the term '*convent*' from that of its usual acceptation, such pleasure could probably be accomplished with legal propriety. Upon this record it cannot be said that the respondent's use and occupancy of the premises is in plain ***620** disregard of the limitations imposed by the express words of the zoning ordinance.

Judgment affirmed.

All Citations

267 Wis. 609, 66 N.W.2d 627

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KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Kucharski v. Meloney, Wis.App., May 27, 2020

94 Wis.2d 421
Supreme Court of Wisconsin.

John F. CROWLEY, Eileen M. Crowley, Gerald E. Wright and Linda L. Wright, Plaintiffs-Respondents,
v.
Donald F. KNAPP, Bette M. Knapp, and Lori Knapp, Inc., a Wisconsin Corporation, Defendants-Appellants.

No. 76-398
|
Argued Sept. 10, 1979.
|
Decided March 4, 1980.

Synopsis

In an action to enforce restrictive covenants in a deed to lots, injunctive relief was granted by the Circuit Court, Crawford County, Richard W. Orton, J., and defendant appealed. The Supreme Court, Heffernan, J., held that: (1) the common grantor's manifestation of intent prior to conveying any part of defined area may be sufficient to show a general plan permitting enforcement of private deed covenants by persons not privy, but the court is not restricted to examination of conduct occurring at or prior to the original conveyance; (2) in view of evidence permitting the trial court to find a general scheme or plan, restrictive covenants which were part of the plan could be equitably enforced by all grantees whose titles derived from the common grantor; but (3) where purchasers immediately upon purchase converted into two bedrooms a structure which was not an outbuilding but was attached to the main portion of a house and had been a garage prior to alterations, there was no violation of a covenant which prohibited living in a garage or outbuilding; and (4) the word "family" being undefined in a deed restriction, occupancy of a home by adult retarded residents did not violate the restrictive covenants though such adults were not all related by blood or marriage, considering that the covenants did not foreclose use of property for commercial purposes.

Reversed and remanded with directions to dissolve injunction.

Day, J., filed an opinion dissenting in part and concurring in part, in which opinion Callow, J., joined.

Coffey, J., dissented and filed opinion in which Callow, J., joined.

Procedural Posture(s): On Appeal.

West Headnotes (8)

[1] Appeal and Error Covenants

30 Appeal and Error
30XVI Review
30XVI(D) Scope and Extent of Review
30XVI(D)22 Substantive Matters
30k3736 Property in General
30k3740 Covenants
(Formerly 30k1008.1(14))

Trial court's finding of fact in respect to grantor's intention to create restrictive covenant running with land is entitled to same weight on appeal as are other findings of fact by court.

2 Cases that cite this headnote

[2] Covenants Persons Entitled to Enforce Real Covenants

108 Covenants
108II Construction and Operation
108II(D) Covenants Running with the Land
108k77 Persons Entitled to Enforce Real Covenants
108k77.1 In general
(Formerly 108k77)

Common grantor's manifestation of intent prior to conveying any part of defined area may be sufficient to show general plan permitting enforcement of private deed covenants by persons not privy, but court is not restricted to examination of conduct occurring at or prior to original conveyance.

5 Cases that cite this headnote

[3] Covenants Grantees and Assignees in General

108 Covenants
108II Construction and Operation
108II(D) Covenants Running with the Land

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108k77 Persons Entitled to Enforce Real Covenants
108k79 Grantees and Assignees in General
108k79(1) In general

In view of evidence permitting trial court to find general scheme or plan, restrictive covenants which were part of plan could be equitably enforced by all grantees whose titles derived from common grantor.

4 Cases that cite this headnote

[4] **Appeal and Error** Conclusions of Law in General

Appeal and Error Verdict and Findings in General

30 Appeal and Error
30XVI Review
30XVI(D) Scope and Extent of Review
30XVI(D)2 Particular Subjects of Review in General
30k3162 Conclusions of Law in General
30k3163 In general
(Formerly 30k842(2))
30 Appeal and Error
30XVI Review
30XVI(D) Scope and Extent of Review
30XVI(D)9 Verdict and Findings in General
30k3401 In general
(Formerly 30k842(2))

Rule that finding of fact cannot be reversed unless it is contrary to great weight and clear preponderance of evidence is inapplicable to conclusion of law mislabeled as finding of fact.

12 Cases that cite this headnote

[5] **Covenants** Questions for jury

108 Covenants
108IV Actions for Breach
108k133 Trial
108k134 Questions for jury

Construction of terms of ordinance restricting use of property is question of law when there is no dispute in evidence in respect to use of the property, and same rule applies to findings of fact pertaining to private deed restrictions. W.S.A. 46.03(22)(d).

14 Cases that cite this headnote

[6] **Covenants** Buildings

108 Covenants
108III Performance or Breach
108k103 Covenants as to Use of Property
108k103(2) Buildings

Where purchasers immediately upon purchase converted into two bedrooms a structure which was not outbuilding but was attached to main portion of house and had been garage prior to alterations, there was no violation of covenant, in deed, which prohibited living in garage or outbuilding.

1 Case that cites this headnote

[7] **Covenants** Nature and operation in general

Zoning and Planning Free or unrestricted use of property

108 Covenants
108II Construction and Operation
108II(C) Covenants as to Use of Real Property
108k49 Nature and operation in general
414 Zoning and Planning
414V Construction, Operation, and Effect
414V(A) In General
414k1204 Free or unrestricted use of property
(Formerly 414k232)

Public policy favors free and unrestricted use of property, and accordingly restrictions contained in deeds and in zoning ordinances must be strictly construed to favor unencumbered and free use of property, and provision in zoning ordinance or deed restriction which purports to operate in derogation of free use of property must be expressed in clear, unambiguous and peremptory terms. W.S.A. 46.03(22)(d).

40 Cases that cite this headnote

[8] **Covenants** Covenants as to Use of Property

108 Covenants
108III Performance or Breach
108k103 Covenants as to Use of Property
108k103(1) In general

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Word "family" being undefined in deed restriction, occupancy of home by adult retarded residents did not violate restrictive covenants though such adults were not all related by blood or marriage, considering that covenants did not foreclose use of property for commercial purposes. W.S.A. 46.03(22)(d).

24 Cases that cite this headnote

Attorneys and Law Firms

****816** ***423** Robert C. Kelly, Madison, argued, for appellants; William Haus and Kelly & Haus, Madison, on brief.

Robert R. Scheffer, Prairie du Chien, argued, for respondents; Scheffer & Queram, Prairie du Chien, on brief.

Opinion

HEFFERNAN, Justice.

This case arises out of the attempted enforcement of restrictive covenants in a deed to two lots in an area known as "Meadowlane" in the outskirts of Prairie du Chien, Wisconsin. The property was purchased in 1973 by Donald F. Knapp and his wife, Bette M. Knapp (hereafter the Knapps), for the purpose of establishing a non-institutional home for retarded adults. Neighbors, who took title to their property from a common grantor, brought an action to enjoin the defendants from using the property for this purpose on the grounds that it violated the restrictive covenants. ****817** The court, after a trial, enjoined the defendants from the use of the property as a residence for retarded adults upon finding that the Knapps had violated the following deed covenants:

"1) The use of said premises shall be restricted to the construction of one single family dwelling, with a one or two car garage, and shall be used for residential purposes only.

"2) No garage or outbuilding or part of the same shall be used as a residence at any time, either before or after construction of the residence."

***424** Although no specific finding was made in respect to the covenant violated, the court also enjoined the defendants from carrying on any commercial activity on the premises. The appeal by the Knapps is from the entire judgment.

The basic question is whether, based on the undisputed facts, the defendants' use of the property as a state-licensed, run-for-profit group residence housing eight unrelated retarded adults violated the covenant requirement that the property's use "shall be restricted to . . . one single family dwelling . . . for residential purposes only." Before that question can be addressed, however, it must be determined whether the plaintiffs, neighboring landowners, who derive their titles from a common grantor, can enforce restrictive covenants incorporated in a deed to which they are not parties.

The record demonstrates that the original landowners of the parcel known as Meadowlane were Clarence and Mildred Ahrens (hereafter Ahrens). On March 28, 1968, Ahrens conveyed a lot to Gerald E. and Linda L. Wright (hereafter the Wrights), who are plaintiffs in this action. On May 10, 1968, Ahrens conveyed a lot to the other plaintiffs, John F. and Eileen M. Crowley (hereafter the Crowleys). On the same day, Ahrens conveyed two lots to Franklin A. and Mary A. Weeks (hereafter the Weeks). It is the use of this property, conveyed to the Knapps on November 2, 1973, which is in question in this action. At the time of the initial conveyance to the Wrights, each lot of the Ahrens' property was marked by stakes. Each of the Meadowlane lots subsequently conveyed by Ahrens was subject to restrictive covenants which were substantially identical to those applicable to the Knapps' property.

The plaintiffs in this case were not privy to the restrictive covenants in the deed from Ahrens to the Weeks or the deed from the Weeks to the Knapps. The ***425** Knapps take the position that, although an owner of land may impose restrictions upon the portion conveyed, those restrictions create only a personal right in the grantor unless it is apparent from the face of the instrument or it is clear by fair implication that the right will inure to the benefit of other grantees acquiring title in the same tract. Stated differently, the fact that the owner of one lot would be benefited by the enforcement of a restrictive covenant in a deed conveying a nearby lot to another party does not entitle the former to enforce the covenant where there is no privity of contract, unless it is shown that the parties derived title from a common grantor, that the restrictions were imposed for the benefit of the other lot, and that the party seeking to enforce the covenant purchased his lot with the knowledge of, or in consideration of, the restrictions.

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State courts have adopted different theories to justify the enforcement of restrictive covenants by one who is not privy to the instrument containing the covenant sought to be enforced. See generally, Annot., Who May Enforce Restrictive Covenant, 51 A.L.R.3d 556 Et seq. (1973); 20 Am.Jur.2d, Covenants, sec. 292 Et seq.

In Wisconsin, this court has enforced private deed covenants on the theory that the common grantor imposed restrictions on each parcel of property sold, with a general scheme in mind of making the individual lots more attractive to all purchasers. According to this theory, even in the absence of privity of contract, another purchaser of land in the same tract may enforce the covenant when there is evidence to show that the original grantor inserted the covenant to carry out a general plan or scheme ****818** of development. The question, then, is whether the common grantor, Ahrens, placed the restrictive covenants in the deed for the purpose of carrying out a general plan of development, which was to inure to the benefit of other grantees.

***426** This court has repeatedly accepted the "general plan or scheme doctrine" in determining whether a person purchasing property in a particular tract may invoke the equitable powers of the court to enforce a covenant to which he was not privy. Representative cases approving relief on this theory are Ward v. Prospect Manor Corp., 188 Wis. 534, 206 N.W. 856 (1926); Boyden v. Roberts, 131 Wis. 659, 111 N.W. 701 (1907). The court most recently stated the doctrine in Hall v. Church of the Open Bible, 4 Wis.2d 246, 248, 89 N.W.2d 798, 799 (1958). The court said:

> "It is a well-established rule that a covenant restricting land to residential use, inserted by the proprietor in a conveyance of his lands, inures to the benefit of all the purchasers where it is inserted for the purpose of carrying out a general plan or scheme of development, and that it constitutes at least an equitable servitude upon the land, and constitutes a valuable property right which a court of equity will enforce in the absence of facts and circumstances making such enforcement unjust or inequitable."

The trial court specifically held that the Crowleys and the Wrights, the common grantees, were proper parties to enforce the restrictions, because it found:

> "That it was the intent and purpose of Ahrens to create and adopt a general plan or scheme for a subdivision to be known as Meadowlane Addition which would contain only single family dwellings used exclusively for residential purposes . . .."

[1] A trial court's finding of fact in respect to a grantor's intention to create a restrictive covenant running with the land is entitled to the same weight on appeal as are other findings of fact by a court. Clark v. Guy Drews Post, 247 Wis. 48, 18 N.W.2d 322 (1945). Accordingly, ***427** the court's finding must be accepted unless contrary to the great weight and clear preponderance of the evidence.

Our examination of the record shows that Ahrens consistently inserted substantially identical covenants into the Meadowlane deeds. When he made his original conveyances, Ahrens stated that he intended to put the same restrictions on all the Meadowlane property, and he instructed his real estate representative to put the same deed restrictions on any remaining Meadowlane property when it was sold. Additionally, when Ahrens sold the first parcel, the entire Meadowlane tract had been staked out, showing that a common plan for the disposition of all the Meadowlane property existed from at least 1968.

The defendants assert, however, that a general plan of development can be proved only if there was evidence that the plan existed when the initial conveyances were made to the Weeks and the Crowleys on May 10, 1968. The defendants argue that there was no legally cognizable subdivision on that date and that it is only from the pattern of the subsequent conveyances that any evidence can be gleaned of a common plan. The Knapps argue that no general plan existed at the time of the original conveyance of the property eventually acquired by the Knapps, and that, therefore, the covenants in the chain of title by which the Knapps acquired the property were enforceable only by the privies to those deeds.

[2] **[3]** The record shows that the trial court considered not only the conduct and representations of the common grantor at and prior to the original conveyance, but also considered his subsequent conduct in selling other Meadowlane parcels.

Boyden v. Roberts, supra, and Ward v. Prospect Manor Corp., supra, conclude that the general plan or scheme for the subdivision could be ascertained from the common grantor's manifestation of intent prior to conveying any ***428** part of a defined area. Although such prior manifestations of intent are sufficient to show a general plan, a Wisconsin court is not restricted to the examination ****819** of conduct occurring at or prior to the original conveyance. In Schneider v. Eckhoff,

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188 Wis. 550, 206 N.W. 838 (1926), the court stated that the grantor's intent to create a general development plan could best be determined by examining the pattern manifested by all of his conveyances. In Schneider, the court considered whether a grantee could build a combination residence-retail building in a platted subdivision containing individual deed restrictions. The court stated:

> "The serious question involved on this branch of the case consists of whether or not the evidence warrants the conclusion that the original grantors adopted a general plan or scheme which was designed not only for the benefit of the grantors' remaining property but also for the benefit of the various grantees of the lots or parcels sold and their successors or assigns. . . . In the instant case, if it be held that a general scheme or plan was adopted, it must follow from the execution of the various deeds containing the restrictions to the respective purchasers. . . . Whether or not these restrictions were intended for the benefit of the grantees is largely a matter of intention, and this intention can be gathered not only from the nature and form of the deeds themselves but from all the surrounding facts and circumstances." (pp. 556-57, 206 N.W. pp. 840-841)

Perhaps most significantly, the court in Schneider said, "Even the last deed contained these restrictions, which fact is of evidentiary value . . . ." (p. 558, 206 N.W. p. 841) Thus, in Schneider, the court examined not only the conveyances to the parties involved, but also examined subsequent conveyances and the subsequent conduct by the common grantor as evidence of his intent to adopt a general plan for the benefit of other grantees of the lots.

The trial judge in the instant case applied the rationale stated in Tubbs v. Green, 30 Del.Ch. 151, 161, 55 A.2d 445, 450 (1947). Therein the court said:

> ***429** "Implicit in the very creation of a residential plan by the practice of inserting residential restrictions in deeds is the fact that the plan evolves and does not immediately burst into full bloom. Therefore, I cannot agree that restrictions imposed subsequent to the date of those imposed on defendant's property may not be considered in determining whether a residential plan was created."

We accept the statement in Tubbs and explicitly approve it as an expression of Wisconsin law. We conclude that the trial judge appropriately applied Wisconsin law when he examined all the common grantor's conveyances and all manifestations of intent in determining that there was a general plan or scheme. The restrictive covenants which were a part of that plan could be equitably enforced by all of the grantees whose titles derived from the common grantor. The facts found by the judge to show a common plan of development are not contrary to the great weight and clear preponderance of the evidence. The trial judge correctly determined that the Crowleys and the Wrights, although not privy to the particular instrument conveying the land in question, had the right to enforce the covenants contained therein.

[4] **[5]** The principal question to be resolved on this appeal, however, is whether the defendants' use of the property violates the restrictive covenants. The trial court found, as a fact, that they were in violation of restrictive covenants 1 and 2 of the deed. A finding of fact, if it indeed be one, cannot be reversed unless it is contrary to the great weight and clear preponderance of the evidence. However, that rule is inapplicable if what is labeled as a finding of fact is essentially a conclusion of law. Boutelle v. Chrislaw, 34 Wis.2d 665, 673, 150 N.W.2d 486 (1967). The construction of the terms of an ordinance restricting the use of property is a question of law when there is no dispute in the evidence in respect to the use of the property. ***430** Browndale International, Ltd. v. Board of Adjustment, 60 Wis.2d 182, 199-200, 208 N.W.2d 121 (1973). The same rule applies to findings of fact pertaining to private deed restrictions. See, ****820** State ex rel. Bollenbeck v. Shorewood Hills, 237 Wis. 501, 508, 297 N.W. 568 (1941). Because there is no dispute about the defendants' use of the Meadowlane property, the questions posed are matters of law, and the trial court's interpretation of the deed restrictions is entitled to no special weight on appeal.

A review of the facts concerning the use of the property is, however, appropriate. The record shows that in 1972 the defendants, Donald F. Knapp and Bette M. Knapp, organized a business corporation known as Lori Knapp, Inc. This corporation was organized to operate a non-institutional family care home for retarded children. This home operated successfully. At the suggestion of a representative of the Wisconsin Department of Health and Social Services, the Knapps undertook the establishment of a similar type of residential home for retarded adults. In July of 1973, the Knapps negotiated for the purpose of two adjacent lots from the Weeks. Located on the property was a large residence which could be made suitable for this purpose. The Weeks, as recited above, secured their title from Ahrens, the common grantor, on May 10, 1968. In the course of negotiations, the Weeks told the defendants that the property deed contained

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restrictive covenants which might be construed to prevent the use of the property for a group home. These restrictions in part provided:

> "The real estate described in the annexed deed is sold and conveyed subject to the following restrictive covenants, which shall be in full force and effect hereafter and shall be in the nature of covenants running with the land and which, by the acceptance of this conveyance, shall bind the grantee or grantees and his, her or their successors in title, to-wit:
>
> ***431** "1) The use of said premises shall be restricted to the construction of one single family dwelling, with a one or two car garage, and shall be used for residential purposes only.
>
> "2) No garage or outbuilding or part of the same shall be used as a residence at any time, either before or after construction of the residence.
>
> ". . .
>
> "7) No residence shall be constructed or remodeled which will house more than one family nor shall any residence be higher than two stories.
>
> ". . .
>
> "13) No noxious or offensive trade or activity shall be carried on or conducted on the premises, nor shall anything be done therein or thereon which may become an annoyance or nuisance to the neighbors.
>
> "14) Invalidation of any one of these covenants by any Court shall in no wise affect any of the other provisions which shall remain in full force and effect . . .."

Prior to proceeding with the transaction, the Knapps told the Crowleys and the Wrights of their plan to purchase the property and explained its intended use. Before the closing of the sale between the Weeks and the Knapps, the Crowleys and the Wrights served a written notice stating that they objected to the intended use of the property because it violated the restrictive covenants. Although the Weeks offered to release the defendants from the sales contract, the Knapps purchased the property. The deed contained the restrictive covenants set forth above.

The Knapps then leased the property to the Lori Knapp Corporation. Before using the property, a number of improvements and alterations were made to the premises, the most notable of which was the conversion of the attached garage into two bedrooms. Through the cooperation of the Wisconsin Department of Health and Social Services, the defendant, Lori Knapp, Inc., secured eight mentally retarded adult occupants as volunteer residents of the home. The building was used as a residence, ***432** and the persons living on the premises shared the common areas of the house the living room, dining room, and recreation rooms and they ate their meals together. They left the house during the day to attend a county-operated development center and some of them apparently had jobs for which they were paid. They were "high functioning persons," in that they were able to take ****821** care of their personal needs and assisted with the cooking and the housekeeping. A nonprofessional couple resided at the house on a full-time basis to feed the occupants and to serve in a parental role for the eight residents. The eight residents lived there voluntarily on a permanent basis. No professional care or therapy was available in the house. The purpose of the home was to provide a residential living environment for retarded citizens to enable them to become a part of the community. [1]

[1] See, sec. 46.03(22)(d), Stats. (1977), which provides:
"(22) Community living arrangements.

> "(d) A community living arrangement with a capacity for 8 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to single-family or 2-family residences. . . . Covenants in deeds which expressly prohibit use of property for community living arrangements are void as against public policy."

This subsection was enacted as part of ch. 205, Laws of 1977 (A.B. 383), effective March 28, 1978. The statement of legislative purpose accompanying this subsection provides:

> "SECTION 1. Legislative purpose. The legislature finds that the language of statutes

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relating to zoning codes should be updated to take into consideration the present emphasis on preventing or reducing institutionalization and legislative and judicial mandates to provide treatment in the least restrictive setting appropriate to the needs of the individual. This change in emphasis has occurred as the result of recent advances in corrections, mental health and social service programs. It is the legislature's intent to promote public health, safety and welfare by enabling persons who otherwise would be institutionalized to live in normal residential settings, thus hastening their return to their own home by providing them with the supervision they need without the expense and structured environment of institutional living. To maximize its rehabilitative potential, a community living arrangement should be located in a residential area which does not include numerous other such facilities. The residents of the facilities should be able to live in a manner similar to the other residents of the area. The legislature finds that zoning ordinances should not be used to bar all community living arrangements since these arrangements resemble families in all senses of the word except for the fact that the residents might not be related. The legislature also finds that deed covenants which restrict or prohibit the use of property for community living arrangements are contrary to the vital governmental purpose of achieving these goals. The legislature believes these matters of statewide concern can be achieved only by establishing criteria which restrict the density of community living arrangements while limiting the types of and number of facilities which can exist in residential neighborhoods having an appropriate atmosphere for the residents, thereby preserving the established character of a neighborhood and community."

The parties to the instant litigation did not argue the applicability of this statute to the case before us. Because we resolve the present case without need to resort to the 1977 statute, we do not consider whether it voids prior restrictive covenants.

We do note, however, that the express legislative intent underlying the above provision, in harmony with the elementary principle of property law favoring the free and unrestricted use of land, is to enable "persons who otherwise would be institutionalized to live in normal residential settings."

***433** Although the evidence indicates that, before the establishment of the home, the plaintiffs were concerned that the activities at the home would create a common-law nuisance or be an annoyance, the evidence is uncontradicted that these retarded adults created no problems or annoyance in the neighborhood.

[6] Two crucial conclusions of the trial court must be examined in light of the uncontroverted facts. It is apparent that the trial court's finding that the defendants were in violation of covenant 2, which prohibits living in a garage or outbuilding, is erroneous as a matter of ***434** fact. The portion of the building which had been used as a garage prior to the purchase by the Knapps was not an outbuilding, but was attached to the main portion of the house. Although a garage prior to the alterations, the defendants, immediately upon purchase, converted the area into two bedrooms. The

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remodeling included raising the floor to conform to that of the contiguous house and adding interior lights, insulation, windows, carpeting, and drapes. The floor plan of the remodeled building shows that no part of the structure could be used for garage purposes. Covenant 2 does not prohibit the conversion of a garage into bedrooms. It was contrary to the evidence for the trial court to conclude that a garage was being ****822** used as a residence. After the remodeling, the area was an integral part of the residence and bore no resemblance to a garage.

The court also concluded that the grantor, by the covenant, intended to restrict the properties' use to single family residences "occupied by a group of people who were related to one another by blood or marriage and who resided in such dwelling as a single housekeeping unit."

In reaching that conclusion, the trial judge construed the term "family" in the restrictive covenant to mean only those persons who are related by consanguinity or marriage. An inspection of the covenants themselves makes it obvious that the drafter of the covenant did not define "family" in that manner. "Family" is used without definition.

[7] This court consistently holds that public policy favors the free and unrestricted use of property. Accordingly, restrictions contained in deeds and in zoning ordinances must be strictly construed to favor unencumbered and free use of property. McKinnon v. Benedict, 38 Wis.2d 607, 619, 157 N.W.2d 665 (1968); ***435** State ex rel. Bollenbeck v. Village of Shorewood Hills, 237 Wis. 501, 297 N.W. 568 (1941); Cohen v. Dane County Board of Adjustment, 74 Wis.2d 87, 91, 246 N.W.2d 112 (1976). In Cohen, we cited Rathkopf, 1 The Law of Zoning and Planning (4th ed.), ch. 9, at p. 9.1, for the proposition that restrictions on the use of property are to be construed in favor of free use. A provision either in a zoning ordinance or in a deed restriction which purports to operate in derogation of the free use of property must be expressed in clear, unambiguous, and peremptory terms.

[8] This rationale was employed in Missionaries of La Salette v. Whitefish Bay, 267 Wis. 609, 66 N.W.2d 627 (1954). In that case, the Village of Whitefish Bay, by zoning ordinance, purported to restrict the use of property in the particular district to single-family dwellings. The ordinance defined "family" as "one or more individuals living, sleeping, cooking, or eating on premises as a single housekeeping unit." (p. 611, 66 N.W.2d p. 629). In La Salette, the building in a residential neighborhood was occupied by a group of priests and lay brothers, who at no time exceeded eight in number. The two lay brothers did the housekeeping and prepared and served the meals. The priests lived at the home but performed their religious duties elsewhere. The Village of Whitefish Bay argued that the term "family" was restricted in meaning to a group of individuals related to one another by blood or marriage. This court disagreed, relying upon the public policy that restrictions placed upon the use of land must be strictly construed. We stated that a violation of a zoning ordinance can only occur when there is a plain disregard of limitations imposed by express words. The court, relying upon Bollenbeck, supra, said:

> " 'Covenants restricting the use of land are construed most strictly against one claiming their benefit and in favor of free and unrestricted use of property; a violation of the covenant occurs only when there is a plain disregard of the limitations imposed by its express words.' " (p. 614, 66 N.W.2d p. 630).

***436** The court pointed out that this rule is equally applicable to private deed restrictions and building and zoning ordinances. The court held that the Missionaries of Our Lady of La Salette were not in violation of the zoning restriction, because the ordinance did not expressly define a "family" to exclude all who are not related by blood or marriage relationship. The court stated:

> "Had it been the pleasure of the legislative body when defining the word 'family,' to have excluded in the district any dwelling use of premises there situated, by a group of individuals not related to one another by blood or marriage, it might have done so. Since there is a complete absence of any such limitation, it seems clear that it was not the legislative intent to restrict the use and occupancy to members of a single family related within degrees of consanguinity or affinity." (p. 615, 66 N.W.2d p. 630).

The court went on to discuss the ordinary meaning of the word, "family":

> ****823** "It is to be noted that aside from the definition of the term 'family' in the ordinance, the ordinary concept of that term does not necessarily imply only a group bound by ties of relationship.
>
> " 'Family' is derived from the Latin 'Familia.' Originally the word meant servant or slave, but now its accepted definition is a collective body of persons living together in one house, under the same management and head

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subsisting in common, and directing their attention to a common object, the promotion of their mutual interests and social happiness."

In La Salette, this court said that the term, "family," did not necessarily exclude from its meaning a group of unrelated persons living together in a home. The court held that the eight priests who lived, slept, cooked, and ate upon the premises as a single housekeeping unit were not in violation of the zoning ordinance. It concluded that the term, "family," would not be construed to import the requirement of consanguinity or affinity between the ***437** parties when those requirements were not expressly set forth. By dicta, the court expanded its holding by stating:

"The arrangement appears to be no different than were a group of school teachers, nurses, etc., in some collective capacity, to acquire the premises, use the same as a residence for the group, and pursue their avocations away from the place." (pp. 616-17, 66 N.W.2d p. 631). [2]

[2] Because in the case now before the court we conclude that the occupants of the Lori Knapp Meadowlane Home did not violate the express restrictions of the deed, we do not address ourselves to the equal protection question of whether a definition of "family" limited to consanguinity or marriage would withstand attack as an unconstitutional classification. See, Timberlake v. Kenkel, 369 F.Supp. 456 (1974), in which it was held that the definition of the term, "family," in a village zoning ordinance requiring a blood or marriage relationship was unconstitutional as being in violation of the equal protection clause of the United States Constitution. While Timberlake held that the Village of Shorewood's ordinance constituted state action in violation of equal protection, we note that judicial enforcement in a state court of a similarly offensive private deed restriction would also constitute state action. Barrows v. Jackson, 346 U.S. 249, 73 S.Ct. 1031, 97 L.Ed. 1586 (1953); Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948); Cf., Moore v. East Cleveland, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977).

The factual similarity between the nature of the occupancy of the priests and the persons in the Knapp home is striking, and the term, "family," used in imposing the purported restriction is identical. La Salette held that in legal usage, unless otherwise defined, a family may mean a group of people who live, sleep, cook, and eat upon the premises as a single housekeeping unit. Moreover, as was also pointed out in La Salette, the commonly held understanding of the term, "family," like its legal usage, "does not necessarily imply only a group bound by ties of relationship." Id. at 615, 66 N.W.2d at 630. If the meaning of that term is to be further limited, the limitation must be expressly stated. As in La Salette, the restrictive covenant in the present case did not define "family" to be a group related by consanguinity or marriage.

***438** It is contrary to the public policy of this state to impose a restriction upon the use of land when that restriction is not imposed by express terms. [3] We accordingly conclude ****824** that the occupancy of the home by the adult retarded residents did not violate the restrictive deed covenants.

[3] Without reference to any authority whatsoever, the dissents ignore the fundamental concept that private deed restrictions, like zoning and building ordinances, must be strictly construed in favor of the free and unrestricted use of property. The authors of the dissenting opinions interpret the covenant largely on the basis of the grantor's probable intent. That position is erroneous as a matter of law, because only the intent of the grantor as expressly set forth in the covenant is relevant. Schneider v. Eckhoff, 188 Wis. 550, 556, 206 N.W. 838 (1926), explicitly holds that one does not look to an amorphous general intent in determining the meaning of the restrictive words, but, instead, must look to the very words used:
"(I)f it had been the intention of the original owners to exclude all business, such intention could easily and readily have been expressed. At most, it may be said that the language used in the restriction is doubtful in its meaning, and in such a case all doubt, under the general rule, should be resolved in favor of the free use thereof for all lawful purposes by the owner of the fee. See numerous cases cited and digested in the annotations in 18 A.L.R. page 451." (at 555-56, 206 N.W. at 840).

This conclusion is further supported by this court's discussion in Browndale International, Ltd. v. Board of Adjustment, 60 Wis.2d 182, 208 N.W.2d 121 (1973). In Browndale, this court found that the use violated the Dane County zoning ordinances, because:

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> "The use of the premises is not even principally for residential living purposes. Rather, its primary use is to provide care and treatment for emotionally disturbed children."

The children in Browndale were there for psychiatric and medical care. The court harkened back to the language of La Salette, stating:

> ***439** "The therapeutic home 'arrangement' is substantially different than a group of priests, nurses, school teachers, students or others who acquire premises to use as a residence for a group." (p. 201, 208 N.W.2d p. 131)

Browndale is different from La Salette and different from the instant case, because, in the instant case, as in La Salette, the structure is used only as a residence and not for therapy. Browndale was a treatment center. Additional distinctions exist between Browndale and this case. In Browndale, the defendant intended to use the property for a cluster of six homes. The court pointed out that what was proposed was an "institutional complex." (p. 201, 208 N.W.2d 121). Browndale, then, posed an entirely different problem than that presented in this case or in La Salette. Aside from whether the persons in Browndale constituted a family, it was apparent that they were not occupying the property as a residence when they were placed there involuntarily by court order for temporary psychiatric and medical care. Moreover, it should be emphasized that, unlike the transient nature of the childrens' occupancy of the treatment centers in Browndale, the Lori Knapp residents regard the home as their permanent residence. This is not a boarding house; the same eight people have resided at the home since it opened, and the record clearly indicates that they planned to remain there permanently.

An additional distinction between Browndale and this case is important. In Browndale, this court found a violation of the Zoning ordinance, because Browndale's sole purpose was commercial. Under the Dane County zoning regulations, no commercial establishment was permitted in a one-family-use district.

In the instant case, we are confronted not with a zoning ordinance, but with a restrictive covenant in a private deed. The covenants in the deeds here do not foreclose the use of the property for commercial purposes. In fact, they specifically provide that "(n)o noxious or ***440** offensive trade" shall be carried on. It is noteworthy that there is no prohibition whatsoever of commercial use. A reasonable inference to be derived from the covenant is that commercial use is permissible if not "noxious or offensive." The use of the premises annoyed no one, and no attempt was made to show any noxious or offensive trade.

The rationale of Browndale is not applicable. This court, in Browndale, properly excluded commercial activity, because, under the scheme of zoning ordinances adopted pursuant to Wisconsin law, any use not expressly permitted is prohibited. See, Cohen v. Dane County Board of Adjustment, supra. Hence, under the zoning ordinances in Browndale, any commercial use was banned in a residential zone. No hierarchy or use, prohibited or allowed, applies in the interpretation of restrictive covenants. When a land use is restricted by covenants, it must be expressed and unequivocal. Commercial use per se was not banned by the covenants here, and by implication a commercial use not noxious or offensive was permissible. Nothing in the deed restrictions authorized the court to enjoin any commercial use of the property.

We conclude that, although the plaintiffs had the equitable right to enforce restrictive covenants contained in all the Meadowlane deeds, no covenant was violated. The judgment enjoining the defendants from ****825** the present use of their land must be reversed.

Judgment reversed, and cause remanded with directions to dissolve the injunction.

DAY, Justice (dissenting in part and concurring in part).
I would affirm that part of the trial court judgment enjoining use of the property in question "as a facility or home for persons who are not related by blood or marriage."

***441** The Knapps acquired the property by deed which contained certain covenants restricting its use. The ones in question before us are:

> "1) The use of said premises shall be restricted to the construction of one single family dwelling, with a one or two car garage, and shall be used for residential purposes only.
>
> "2) No garage or outbuilding or part of the same shall be used as a residence at any time, either before or after construction of the residence."

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The Knapps bought the property for the purpose of running a boarding house for profit to house eight unrelated mentally retarded adults plus two adult custodians to run the operation. In the offer to purchase the property it was stated that the Knapps made the offer "subject to approval of Wisconsin Industrial Commission (for intended use as a Multi-family-residential)." The buyers were fully aware of the use restrictions placed on this property at the time of the offer and at the time of purchase.

The record shows the Knapps knew of the plaintiffs' objection to the proposed use of the property prior to consummation of their purchase agreement.

The majority opinion correctly holds that the covenants in question were part of a general plan of development that the Crowleys and Wrights had the right to enforce.

The majority faults the terminology of the restriction for not defining "family" as being limited to those related by blood or marriage. I would hold that the term family must be given the commonly held meaning that people ordinarily give to the term, i. e., persons related by blood, adoption or marriage. All terms are not always defined in contracts or in deeds and in the absence of an included definition showing a modification of the ordinary meaning of a term as used in the particular context, ***442** I would hold that the generally accepted definition of the word should apply.

When the legislature has used the term, "family" it has generally used it in terms of its commonly accepted meaning. Thus, sec. 245.001(2), Stats. (1975) says in part:

> ". . . Marriage is the institution that is the foundation of the Family and of society. . . ." (Emphasis added).

The legislature has also designated November as Wisconsin family month, sec. 256.171, Stats. (1975) says it is "to focus attention on the principles of Family responsibility to spouses, children and parents, as well as on the importance of the stability of marriage and the home for our future well-being . . ." (Emphasis added).

In sec. 102.07(5)(c), Stats. (1975), the legislature defines a "family farm corporation" as a corporation whose stockholders are related by blood or marriage. [1]

[1] "102.07. Employe Defined . . . (5) . . . (c) A 'family farm corporation' means a corporation engaged in farming all of whose shareholders are related as lineal ancestors or lineal descendants, or as spouses, brothers, sisters, uncles, aunts, cousins, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law, or sisters-in-law of such lineal ancestors or lineal descendants."

None of these statutory uses of the word "family" would encompass the concept of eight unrelated adults living with two custodians as falling within the definition of "single family."

The case of Missionaries Of LaSalette v. Whitefish Bay, 267 Wis. 609, 66 N.W.2d 627 (1954) relied on by the majority is distinguishable. In that case a zoning ordinance restricted use of certain property to single family dwellings. However, the ordinance defined "family" as "one or more individuals living, sleeping, cooking or eating on the premises as a single housekeeping unit." ****826** 267 Wis. at 611, 66 N.W.2d at 629. The ordinance thus defined in ***443** specific terms what a "family" was for purposes of the zoning ordinance. Having defined the term, this Court concluded that eight members of a religious order living together as a unit met the definition of the ordinance. We have no such definition in the case before us and should interpret the word "family" in the sense that Ahrens, the original grantor here and the Wrights and Crowleys undoubtedly interpreted it, that is in its ordinary meaning.

To import the definition of "family" in the Whitefish Bay ordinance to the case at bar is to confuse some things that families may do, i. e. "live, sleep, cook and eat upon the premises as a single housekeeping unit" with what a family is. [2]

[2] "A frog is a bird almost,
When he leaps he flies almost,
When he croaks he sings almost."
Anon.

I disagree with the conclusion in the majority opinion that "(t)he factual similarity between the nature of the occupancy of the priests and persons in the Knapp home is striking, and the term 'family' used in imposing the purported restriction is identical."

On the contrary the factual Dis-similarity is what is "striking." The majority's comparison of a commercial boarding house to a monastic order, living in community, [3] such as the

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Missionaries of our Lady of LaSalette ignores a millennium and a half of western culture.

[3] "It's a miracle how one roof can cover such diverse characters and maintain the name of family. The Abbot is one father who can honestly say, 'No two of my children are alike.' " Alfred H. Deutsch, O.S.B., "Refining Fire," Bruised Reeds And Other Stories, p. 194, (St. John's University Press, Collegeville, Mn., 1971) (An account of monastic life).

The members of a religious order, bound by vows to live, work and carry on religious devotions together, addressing each other as "father" or "brother" has long ***444** been recognized as a special type of relationship dating back to the founder of western monasticism, St. Benedict (c. 480 to c. 547). It is hardly to be compared to a transient boarding house operated for profit. [4]

[4] Donald Knapp testified on direct examination that the residents of the home "are not under commitment and live at Meadow Lane on a voluntary basis." John Lowenstein of the Wisconsin Department of Health and Social Services, Bureau of Mental Retardation testified that "(a)ny resident of the Lori Knapp home could leave the home at their own choice. . . ." (R. 433, 542). We can reasonably conclude that if any one of them leaves they will have to be replaced to keep operation profitable.

I also disagree that "the term 'family', used in imposing the purported restriction is identical." On the contrary, the term "family" in LaSalette was defined by a zoning ordinance; the zoning ordinance provided "(a) family is one or more individuals living, sleeping, cooking or eating on premises as a single housekeeping unit." LaSalette, 267 Wis. at 611, 66 N.W.2d at 629.

This Court held:

> "It is not within the court's province to add or detract from the clear meaning that the village board has expressed in the definition of the word 'family.' " 267 Wis. at 616, 66 N.W.2d at 631.

The only holding of LaSalette is that the living arrangement of the members of the religious order came within the definition of "family" in the ordinance. In my opinion, the LaSalette case involving the specific definition of "family" in a zoning ordinance has no relevance to the question before us.

Supporting the principle of liberal construction of private deed restrictions to promote the free use of land does not require, nor in my opinion sanction, interpreting "single family dwelling" to include the boarding house arrangement for profit in this case. To do so is to ignore the restriction, not to interpret it.

***445** At the time of oral argument, counsel for the Knapps argued that sec. 46.03(22)(d), Stats. created by ch. 205, Laws of 1977 is dispositive of the principal issue in favor of the Knapps. I disagree. The pertinent parts of the statute are set forth in the ****827** majority opinion. In it, the legislature says that "(a) community living arrangement with a capacity for 8 or fewer persons shall be a permissible use for purposes of any deed covenant which limits use of property to single-family or 2-family residences . . ."

I would hold the statute inapplicable because in the case before us ten people are involved and thus not covered.

Counsel for the Crowleys and Wrights argued that his clients acquired their rights prior to the enactment of the statute and that retroactive application would be an unconstitutional impairment of contract. I would not reach that issue on the basis of this record. Even in this statute in the legislatively stated purpose, the act does not say community living is a family but that "the arrangements resemble families . . ." Thus, the legislature recognized that the word "family" as a restriction does not encompass unrelated persons living in groups.

I would affirm that part of the judgment that restrains and enjoins use of the premises as a facility or home for persons not related by blood or marriage and I would concur with the majority in reversing the remainder of the judgment.

I am authorized to state that Justice WILLIAM CALLOW joins in this dissent.

COFFEY, Justice (dissenting).
I cannot agree with the majority which holds:

> (1) the covenant restricting use of the premises to a single family residence was a general plan of development intended for the benefit of all lot owners in the subdivision,

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and can therefore be enforced by them even ***446** though they are not parties to the deed by which defendants obtained title to the property;

(2) family is an elastic term which can include any group living arrangements;

(3) restrictive covenants are to be construed narrowly because of the policy favoring an owner's free and unencumbered use of his property; and

(4) therefore, the covenant in this case, restricting the use of the property to a single family residence, is meaningless, and there is no general plan of development to enforce.

I would hold that the original grantors, the Ahrens, intended and expressed a restriction on the use of the premises, and that the use by defendants as a group home for eight unrelated retarded adults and a married couple as "houseparents" violates that restriction. Therefore, I would affirm the judgment of the trial court.

I have no argument with the holding of the court in Missionaries of LaSalette v. Whitefish Bay, 267 Wis. 609, 66 N.W.2d 627 (1954). The zoning ordinance in that case contained a definition which did not require a blood or marital relationship as a prerequisite to membership in the family group. The priests and lay brothers who occupied the residence were members of a religious order, and were bound by their vows not to enter into a marital relationship. A construction of the ordinance to prohibit their occupancy of the premises would have raised serious questions as to whether the village was interfering with the free exercise of religion or the rights of conscience, in violation of art. I, sec. 18 of the Wisconsin Constitution. I do not agree that the holding of the court in LaSalette is applicable to the facts of this case.

We are dealing with a private developer's legitimate restrictive covenant, not a municipal zoning ordinance. The difference is important. A municipality has an obligation to legislate evenhandedly with respect to all persons. ***447** Legislation which accords different treatment to different classes must be supported, at the very least, by a rational basis. The private developer has no such obligation, being prohibited only from seeking to enforce an invidious discrimination. There is no claim that the covenant in question works an invidious discrimination, nor could there be.

In footnote 3, the majority complains that my dissent, and also that of Justice Day, "ignore the fundamental concept that private deed restrictions, like zoning and building ordinances, must be strictly construed ****828** in favor of the free and unrestricted use of property." The majority forgets that the rule of strict construction is not a rule of law. It should not be used to render a restriction or ordinance meaningless where intent is clear and the activity is obviously within the prohibition. Since the majority demands citation of authority, I offer the following:

"Accordingly, it may well be observed that strict construction is not a precise but rather a relative expression. 'The rule of strict construction has lost much of its force and importance in recent times, since it has become more and more generally recognized that the paramount duty of the judicial interpreter is to put upon the language of the legislature, honestly and faithfully, its plain and rational meaning and to promote its object.' Strict construction of an ordinance means that it must be confined to such subjects or applications as are obviously within its terms and purposes, but it does not require such an unreasonably technical construction that words used cannot be given their fair and sensible meaning in accord with the obvious intent of the legislative body." 6 McQuillin, Municipal Corporations, sec. 20.49 (3rd ed. 1969).

Certainly I am as interested as the majority in aiding and helping to provide adequate care, housing and assistance to the more unfortunate members of our community, but within the confines of any lawful restrictions ***448** provided in the deed to the land. Those individuals who have invested their life savings in land and a home, "The American Dream" are entitled to protection under the law, including enforcement of the covenant, which they relied on when investing in the area, restricting use of the property to that of single family residences. The majority opinion has in effect eliminated the single family restriction by defining family as ". . . a group of people who live, sleep, cook and eat upon the premises as a single housekeeping unit. . . ." Are we to assume from this opinion that a group of 30 or 40 retarded or infirm adults or children would constitute a family?

"Family" is used in many ways. Charles Manson's group was a "family." The Pittsburg Pirates are a "family." But it is obvious, at least to me, that the restrictive covenant in this case would have prevented either from occupying the property in question. Social commentators refer to the "nuclear family" and the "extended family" without having to give a rigorous definition of the terms to convey their meaning. In this case

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the term used is "single family." The deed restriction is not a social worker's document. It is the obligation of this court to make a common-sense decision as to whether the restriction has been violated, bearing in mind the context in which the term is used. A rigorous definition is not necessary, because it is clear that a group of eight retarded adults and two caretakers does not constitute a single family. The legislature recognized as much in the statement of legislative purpose of ch. 205, Laws of 1977, quoted at length in the majority opinion. The significant part of that statement for the purposes of this case is the following sentence: [1]

[1] I agree with the majority that sec. 46.03(22)(d), Stats., is not applicable to this case. There is no need to consider whether it is retrospective, because as applied to single family restrictions, it permits community living arrangements with a capacity of eight or fewer persons. In this case the capacity of the facility is ten persons, the eight retarded adults and the two houseparents.

***449** "The legislature finds that zoning ordinances should not be used to bar all community living arrangements since these arrangements resemble families in all senses of the word except for the fact that the residents might not be related." (Fn. 1, p. 821).

Not only has the legislature recognized that a community living arrangement is not a single family, but so have the defendants in this case. The trial court made the following uncontroverted findings of fact:

"(10) On July 19, 1973, the defendants, Donald F. Knapp and Bette M. Knapp, made, executed and delivered to Franklin A. Weeks and Mary A. Weeks an offer in ****829** writing to purchase 'Lots # 1 and # 2 Meadowlane Addition' (being the same land as described in the first two deeds referred to in par. 7 hereof), for the sum of $39,900.00, which offer to purchase was accepted by said Weeks on the same day and which offer to purchase provided among other things that the offer was 'Subject to approval of Wis.Ind.Comm. (for intended use as multi-family-residential '.

". . .

"(21) That at about the same time (at the time of closing of the transaction) Knapp proceeded to remodel the dwelling on said property and changed the garage into a bedroom and also made certain other structural changes in order to secure approval of the Department of Industry, Labor and Human Relations of the State of Wisconsin so that he could operate and conduct the premises as a multi-family residence."

The two quoted findings of the trial court compel a conclusion that the defendants knew their intended use of the dwelling violated the single family restriction in the deed covenants. Under the pretext of strict construction the majority has set itself up as a mini legislature, and has created a family relationship where it is clear that none exists. I do not agree with the trial court that the term as used in the restrictive covenant must be limited to a relationship by blood or marriage. Adopted children or minor foster children might easily qualify ***450** as members of a single family. However, it is not necessary to explore the outer limits of the definition of "single family." A violation of the covenant occurs when there is a plain disregard of the limitations imposed by its express words. See: Missionaries of LaSalette v. Whitefish Bay, supra.

The plaintiffs were entitled to an injunction against multi-family use of the premises by the defendants. I would modify the injunction granted by the trial court to so state, and would affirm. I am authorized to state that Mr. Justice WILLIAM G. CALLOW joins this dissent.

All Citations

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388 Wis.2d 395, 2019 WI App 43
Court of Appeals of Wisconsin.

VILAS COUNTY, a Wisconsin Municipal Corporation, Plaintiff-Respondent,
v.
Timothy BOWLER, Kim Bowler and Alpine Resort of Presque Isle, Inc., Defendants-Appellants. †

† Petition for Review Filed

Appeal No. 2018AP837
|
Submitted on Briefs: January 8, 2019
|
Opinion Filed: July 30, 2019

Synopsis

Background: County brought action against resort property owners, seeking injunction prohibiting property owners from interfering with installation of signage, as well as forfeitures for property owners' alleged violations of county ordinance establishing uniform addressing system within county. The Circuit Court, Villas County, Neal A. Nielsen III, J., granted county summary judgment. Property owners appealed.

Holdings: The Court of Appeals, Hruz, J., held that:

[1] road leading to owners' private residence and resort, which included nine rental units, was "private road" within meaning of county ordinance concerning assignment of road names within county;

[2] owners' rental cabins were used for human habitation and, thus, were "residences" within meaning of county ordinance concerning assignment of road names within county and applying to private roads serving three or more residences or lots; and

[3] owners' private residence and nine rental cabins all qualified as "principal structures" within meaning of county ordinance concerning assignment of addresses and requiring each such structure to be assigned address in instances in which more than one such structure existed on property.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment; Motion for Permanent Injunction.

West Headnotes (17)

[1] Appeal and Error Briefs

30 Appeal and Error
30X Record
30X(N) Matters Not Apparent of Record
30k714 Matters Appearing Otherwise Than by Record
30k714(5) Briefs

Appellate court typically will not consider materials in appendix that are not in appellate record. Wis. Stat. Ann. 809.19(1)(d), 809.19(3)(a)2.

[2] Appeal and Error De novo review

30 Appeal and Error
30XVI Review
30XVI(D) Scope and Extent of Review
30XVI(D)13 Summary Judgment
30k3554 De novo review

Appellate court reviews grant of summary judgment de novo. Wis. Stat. Ann. § 802.08(2).

[3] Appeal and Error Summary Judgment
Appeal and Error Pleadings and Evidence

30 Appeal and Error
30XVI Review
30XVI(D) Scope and Extent of Review
30XVI(D)13 Summary Judgment
30k3551 In general
30 Appeal and Error
30XVI Review
30XVI(E) Material Considered on Review
30XVI(E)1 In General
30k3806 Pleadings and Evidence
30k3807 In general

Reviewing grant of summary judgment involves following a well-established methodology under which reviewing court first examines pleadings to determine whether claim has been stated, and,

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if so, analyzes whether any factual issues exist. Wis. Stat. Ann. § 802.08(2).

[4] **Municipal Corporations** Ambiguity

Statutes Plain language; plain, ordinary, common, or literal meaning

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k120 Construction and Operation
268k120(5) Ambiguity
361 Statutes
361III Construction
361III(C) Clarity and Ambiguity; Multiple Meanings
361k1107 Absence of Ambiguity; Application of Clear or Unambiguous Statute or Language
361k1111 Plain language; plain, ordinary, common, or literal meaning

Same rules of interpretation apply to ordinances and to statutes; in both instances, court begins with plain language, and if meaning of ordinance or statute is clear, court ordinarily stops inquiry.

1 Case that cites this headnote

[5] **Municipal Corporations** Plain, ordinary, or common meaning

Statutes Construction based on multiple factors

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k120 Construction and Operation
268k120(4) Plain, ordinary, or common meaning
361 Statutes
361III Construction
361III(A) In General
361k1082 Construction based on multiple factors

Statutory and ordinance language is given its common, ordinary and accepted meaning, except that technical or specifically defined words or phrases are given those respective meanings.

1 Case that cites this headnote

[6] **Municipal Corporations** Construction and Operation

Statutes Construction based on multiple factors

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k120 Construction and Operation
268k120(1) In general
361 Statutes
361III Construction
361III(A) In General
361k1082 Construction based on multiple factors

Statutory and ordinance language is interpreted in context in which it is used, not in isolation but as part of whole, in relation to language of surrounding or closely related statutes, and reasonably, to avoid absurd or unreasonable results.

1 Case that cites this headnote

[7] **Private Roads** Establishment

311 Private Roads
311k2 Establishment
311k2(1) In general

Road leading to property owners' private residence and resort, which included nine rental units, led to two or more "principal structures" and, thus, was "private road" within meaning of county ordinance concerning assignment of road names within county.

[8] **Statutes** What constitutes ambiguity; how determined

361 Statutes
361III Construction
361III(C) Clarity and Ambiguity; Multiple Meanings
361k1102 What constitutes ambiguity; how determined

Mere existence of multiple dictionary definitions does not necessarily mean word in statute is ambiguous; many words have multiple dictionary definitions, and applicable definition depends upon context in which word is used.

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[9] **Statutes** Purpose

Statutes Plain Language; Plain, Ordinary, or Common Meaning

361 Statutes
361III Construction
361III(A) In General
361k1074 Purpose
361k1075 In general
361 Statutes
361III Construction
361III(B) Plain Language; Plain, Ordinary, or Common Meaning
361k1091 In general

Explicit statements of legislative purpose are helpful in arriving at correct interpretation of word used in statute; plain-meaning interpretation cannot contravene textually or contextually manifest statutory purpose.

[10] **Private Roads** Establishment

311 Private Roads
311k2 Establishment
311k2(1) In general

Resort owners' rental cabins were used for human habitation and, thus, were "residences" within meaning of county ordinance concerning assignment of road names within county and applying to private roads serving three or more residences or lots.

[11] **Private Roads** Establishment

311 Private Roads
311k2 Establishment
311k2(1) In general

Term "residence," as used in county ordinance concerning assignment of road names within county and applying to private roads serving three or more residences or lots, is not limited to structures intended for degree of permanent occupancy by same individuals and refers generally to structures intended or used for human habitation, regardless of duration of any such habitation by any particular human.

[12] **Appeal and Error** Grounds not considered or relied upon below

30 Appeal and Error
30XVI Review
30XVI(H) Theory and Grounds of Decision Below and on Review
30k4063 Grounds not considered or relied upon below

As general rule, if circuit court reached correct result, appellate court may affirm its decision even if circuit court used rationale that appellate court does not adopt.

[13] **Statutes** Unintended or unreasonable results; absurdity

361 Statutes
361IV Operation and Effect
361k1402 Construction in View of Effects, Consequences, or Results
361k1404 Unintended or unreasonable results; absurdity

Court avoids unreasonable interpretations of statutes.

[14] **Private Roads** Establishment

311 Private Roads
311k2 Establishment
311k2(1) In general

Resort owners' private residence and nine rental cabins all qualified as "principal structures" within meaning of county ordinance concerning assignment of addresses and requiring each such structure to be assigned address in instances in which more than one such structure existed on property and, thus, each was subject to being given separate address; owners' principal use of lot involved both residential and business uses, and all structures in question were used for human habitation.

[15] **Counties** Governmental powers in general

104 Counties
104II Government
104II(A) Organization and Powers in General
104k21.5 Governmental powers in general

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A county's statutory authority is limited to that provided in the enabling statute.

[16] Counties Ordinances and by-laws

104 Counties
104II Government
104II(C) County Board
104k55 Ordinances and by-laws

When county ordinance does not comply with enabling statute, it is invalid and may not be enforced.

[17] Private Roads Establishment

311 Private Roads
311k2 Establishment
311k2(1) In general

Resort owners' rental cabins, located on same property as owners' private residence, qualified as "establishments" within meaning of statute permitting county board to establish rural naming or numbering system for rural roads, homes, businesses, farms, or other establishments by assigning separate addresses and, thus, county did not exceed authority afforded to it under statute by assigning, pursuant to county ordinance, separate address to each of rental cabins, as each cabin was primary or principal structure used for residential or business purposes. Wis. Stat. Ann. § 59.54(4).

****123** APPEAL from a judgment of the circuit court for Vilas County, Cir. Ct. No. 2017CV132: NEAL A. NIELSEN III, Judge. *Affirmed.*

Attorneys and Law Firms

On behalf of the defendants-appellants, the cause was submitted on the briefs of Bryce A. Schoenborn of Slaby, Deda, Marshall, Reinhard & Writz LLP, Phillips.

On behalf of the plaintiff-respondent, the cause was submitted on the brief of Meg C. O'Marro, Vilas County Assistant Corporation Counsel, Eagle River.

Before Stark, P.J., Hruz and Seidl, JJ.

Opinion

HRUZ, J.

***399** ¶1 Timothy Bowler, Kim Bowler and Alpine Resort of Presque Isle, Inc. (collectively, the Bowlers) appeal a summary judgment granted in favor of Vilas County to enforce an ordinance establishing a uniform addressing system within the County. The structures on the Bowlers' property consist of a residence from which the Bowlers operate their resort business and several cabins the Bowlers rent out on a short-term, seasonal basis.

¶2 The Bowlers assert the County lacked authority under the relevant ordinance to name the road serving their residence and rental structures. Their argument in this respect is twofold. First, they contend the road does not satisfy the ordinance's definition of a "private road." Second, they argue the road does not satisfy the ordinance's requirement that the road serve three or more "residences or lots." We conclude the ***400** road is a "private road" within the ordinance definition because it is a road located on private property that leads to the ten structures on the Bowlers' property, each of which is a "primary" or "principal" structure under the ordinance because it is used for human habitation. We also conclude the buildings satisfy the ordinance's requirement that the road serve three or more "residences," which include all of the Bowlers' cabins.

¶3 The Bowlers also challenge the County's authority under the ordinance to assign addresses to their rental cabins. They argue these buildings are not "principal" or "primary" structures and, therefore, are not subject to the County's addressing requirement. Consistent with our conclusion regarding the County's authority to name the Bowlers' private road, we reject this argument and hold that each of the ten structures at issue (the Bowlers' residence and their nine rental cabins) is a "primary" or "principal" structure to which the County may assign an address.

¶4 Finally, the Bowlers argue the ordinance is invalid because the County is applying it beyond the scope of the Wisconsin statute authorizing the County to adopt a rural naming or numbering system. We disagree and conclude the ordinance may be properly applied to each home or business structure on the Bowlers' property. Accordingly, we affirm.

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****124 BACKGROUND** [1]

[1] WISCONSIN STAT. RULE 809.19(3)(a)2. (2017-18) requires a respondent's brief to include a statement of the case "with appropriate references to the record." *See also* RULE 809.19(1)(d). The County's brief includes some citations that refer generally to whole documents within the record without specifying the page of the document on which the relevant information may be found. Additionally, it cites to exhibits without identifying the record document to which the exhibit is attached. Further, the copy of the relevant ordinance the County includes in its supplemental appendix appears not to have been made part of the record below. We typically will not consider materials in an appendix that are not in the appellate record. *Roy v. St. Lukes Med. Ctr.*, 2007 WI App 218, ¶10 n.1, 305 Wis. 2d 658, 741 N.W.2d 256. Nonetheless, the relevant portions of the ordinance are recited in the briefs and in the complaint, the content of the ordinance is undisputed, and a copy of the ordinance is available on the Vilas County website. *See* VILAS COUNTY, WIS., GENERAL CODE OF VILAS COUNTY ch. 28 (2008), https://vilascountywi.gov/documents/Corporation% 20Counsel/chap28.pdf (last accessed July 24, 2019). Under these circumstances, we elect to reach the merits of the Bowlers' challenges. However, this court is a "fast-paced, high-volume court," *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992), and we admonish the County that future violations of the Rules of Appellate Procedure may result in sanctions. *See* WIS. STAT. RULE 809.83(2) (2017-18).

All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted. All references to chapter 28 of the General Code of Vilas County are to the 2008 version.

[1] ¶5 The relevant facts are largely undisputed. The Bowlers own a parcel of real property in Vilas ***401** County that is located in the Town of Presque Isle. Located on the parcel is the Bowlers' permanent residence, out of which they run their business, Alpine Resort of Presque Isle, Inc. The remaining nine buildings on the parcel are cabins that are rented on a short-term, seasonal basis in connection with the Bowlers' resort business.

¶6 In 2008, the Vilas County Board of Supervisors adopted a Uniform Addressing System Ordinance (the Ordinance) as chapter 28 of the General Code of Vilas County. The Ordinance, adopted pursuant to WIS. STAT. § 59.54(4), made explicit its purpose as being to ***402** "facilitate the naming of roads, signing of roads, assigning of addresses, location of address signs and house numbers in order to aid emergency personnel in providing fire protection, emergency medical services, law enforcement services, delivery of mail and meet other general location needs of the public." VILAS COUNTY, WIS., GENERAL CODE OF VILAS COUNTY § 28.01 (hereinafter, VILAS COUNTY CODE).

¶7 To that end, the Ordinance gives the County the authority to name "[e]xisting public or private roads serving three (3) or more residences or lots." VILAS COUNTY CODE § 28.06(3). The Ordinance also dictates that "[a]ll homes, businesses, farms, multifamily dwellings, structures for human habitation, and other establishments, within the unincorporated areas of Vilas County shall have an assigned uniform addressing number." VILAS COUNTY CODE § 28.09(1). In describing the addressing number system, the Ordinance states: "Each principal structure shall be assigned an address based on where the driveway to the structure intersects the named road"; and, "Where more than one principal structure exists, each structure shall be assigned an address." VILAS COUNTY CODE § 28.10(2), (3).

¶8 In early 2015, the County began an address assessment of the Bowlers' Presque Isle property. [2] ***403** During the assessment, ****125** the Vilas County Addressing Coordinator determined that, in addition to the Bowlers' residence, the nine rental units comprising Alpine Resort required address numbers, and the road serving those units and the residence had to be named. The County notified the Bowlers of its conclusion by letter, and it requested that the Bowlers submit a road name request form so the County could proceed with naming the private road. The County stated it would assign address numbers to the structures along the private access road after the road had been named.

[2] According to information the County provided to the Bowlers, the address assessment was part of an effort to "identify[ ] discrepancies in the addressing database that is utilized by the Vilas County Dispatch Center for 911 calls." The County

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> stated that addresses that were not compliant with the address grid "can cause confusion and may create difficulty or delays in locating a structure, especially during an emergency situation." In conducting the assessment, the County was acting pursuant to VILAS COUNTY CODE § 28.11(10), which states: "Existing addresses that are discovered to have been incorrectly assigned shall be evaluated by the County and a determination shall be made if the situation needs to be corrected. The landowner(s) affected may be required to change their address to correct the situation."

¶9 The County received a telephone call from the Bowlers objecting to the County naming their road. Then, on August 31, 2015, the Bowlers attended a meeting of Vilas County's Land Records Committee and objected to the application of the Ordinance in its entirety to the Bowlers' property, including the County's decision to assign address numbers to their rental cabins. The Land Records Committee concluded it was without authority to exempt any property from the Ordinance, and the Addressing Coordinator sent the Bowlers another letter advising them of the County's intent to name their road and assign addresses to the structures on their property.

¶10 As of October 5, 2015, the County had not received a response from the Bowlers regarding their preferred road name, and the County designated the existing road "Alpine Resort Dr." The Bowlers then notified the County that they wished for the road to be named "Private Resort Dr.," which the Town of Presque Isle subsequently approved. The County notified ***404** the Bowlers that signs would be installed on their property reflecting the new road name and assigned addresses for the buildings.

¶11 On December 1, 2015, the Town of Presque Isle installed a new road name sign at Private Resort Drive's intersection with Crab Lake Road, a public right-of-way. The Bowlers confronted the town official who was installing the sign and refused him entry onto their property to install address numbers, claiming his presence was unlawful and he was trespassing. Thereafter, the Bowlers continued to refuse access to their property for installation of address numbers assigned to Private Resort Drive.

¶12 The County filed this action in September 2017, asserting the Bowlers' conduct constituted a "flagrant and continuing violation" of the Ordinance. The County sought an injunction prohibiting the Bowlers from interfering with the installation of any necessary signage, as well as forfeitures for their alleged violations of the Ordinance. In response, the Bowlers asserted that the Ordinance, by its plain terms, could not be applied to their property, such that the County was prohibited from naming their road or assigning an address to any building except their residence. The Bowlers argued that even if the Ordinance could be construed to permit those activities, it exceeded the scope of the authorizing legislation codified in WIS. STAT. § 59.54(4), and therefore was unenforceable by the County. [3]

[3] The Bowlers filed a counterclaim with their answer. The circuit court concluded the counterclaim was indistinct from the Bowlers' answer and affirmative defenses and did not require a responsive pleading from the County. The Bowlers do not challenge that determination on appeal.

****126** ***405** ¶13 The parties filed cross-motions for summary judgment regarding the enforceability of the Ordinance. At the summary judgment hearing, the County asserted that the Ordinance permitted it to assign addresses to any building used for human habitation, and further that such an interpretation was permissible under WIS. STAT. § 59.54(4) because each of the Bowlers' rental structures was a "business" or "establishment" within that statute's meaning. The circuit court stated it understood the County's position. But the court also remarked it could "certainly understand that the [Bowlers] have an interest in the name of their business, and they have an interest in an address that has been established and used for marketing ... for a long time."

¶14 The circuit court adjourned the hearing without granting either summary judgment motion and encouraged the parties to explore the possibility of reaching a "cooperative resolution" involving the Land Records Committee. The Land Records Committee met in February 2018 to again consider the application of the Ordinance to the Bowlers' property, but the Bowlers did not attend the meeting. The committee again concluded the Bowlers were required to comply with the Ordinance.

¶15 The County then filed a motion for default judgment based upon the Bowlers' failure to appear before the Land Records Committee. At the continued hearing on the various motions, the circuit court declined to hold the Bowlers in default, but it granted the County's summary judgment motion. The court concluded that *Liberty Grove Town Board*

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v. Door County Board of Supervisors, 2005 WI App 166, 284 Wis. 2d 814, 702 N.W.2d 33, was "conclusive" of the County's authority to adopt the Ordinance. It also concluded the ***406** rental structures on the Bowlers' property could properly be considered "residences" so as to require naming of the Bowlers' road and addressing of those structures. The Bowlers now appeal.

DISCUSSION

[2] **[3]** ¶16 We review a grant of summary judgment de novo. *Chapman v. B.C. Ziegler & Co.*, 2013 WI App 127, ¶2, 351 Wis. 2d 123, 839 N.W.2d 425. Summary judgment is appropriate if the record demonstrates that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Reviewing a grant of summary judgment involves following a well-established methodology under which we first examine the pleadings to determine whether a claim has been stated, and, if so, we then analyze whether any factual issues exist. *Kieninger v. Crown Equip. Corp.*, 2019 WI 27, ¶11, 386 Wis. 2d 1, 924 N.W.2d 172.

[4] **[5]** **[6]** ¶17 Additionally, this case requires that we interpret and apply the Ordinance and WIS. STAT. § 59.54(4), the statute under which the Ordinance was adopted. The same rules of interpretation apply to ordinances and to statutes. *Schwegel v. Milwaukee Cty.*, 2015 WI 12, ¶22, 360 Wis. 2d 654, 859 N.W.2d 78. In both instances, we begin with the plain language; if the meaning of the ordinance or statute is clear, we ordinarily stop the inquiry. *Id.* Statutory and ordinance language is given its common, ordinary and accepted meaning, except that technical or specifically defined words or phrases are given those respective meanings. *Id.* Additionally, statutory and ordinance ***407** language is interpreted in the context in which it is ****127** used; not in isolation but as part of a whole; in relation to the language of surrounding or closely related statutes, and reasonably, to avoid absurd or unreasonable results. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110.

¶18 The Bowlers challenge various aspects of the Ordinance as part of two overarching arguments. First, the Bowlers assert the County lacks authority under the Ordinance to name their road, both because the road does not qualify as a "private road" and because the road does not serve "three (3) or more residences." *See* VILAS COUNTY CODE § 28.06(3). Second, the Bowlers contend the rental buildings on their property cannot be assigned addresses because only "principal structures" may be assigned an address and their residence is the only "principal structure" on the property. *See* VILAS COUNTY CODE § 28.10(2). We reject these arguments for the reasons that follow.

¶19 The Bowlers also argue that even if the Ordinance is properly interpreted as the County suggests, it exceeds the scope of WIS. STAT. § 59.54(4). The Bowlers therefore assert the Ordinance is invalid and the County cannot enforce it. To the contrary, we conclude the addressing system adopted by the County does not exceed the authority conferred by § 59.54(4).

I. The County properly concluded the Ordinance can be applied to name the Bowlers' road.

¶20 VILAS COUNTY CODE § 28.06 concerns the assignment of road names within the County. Private roads in existence at the time the Ordinance was enacted must be named if they serve three or more ***408** residences or lots. VILAS COUNTY CODE § 28.06(3). A "private road" is defined by the Ordinance as "any road on private property leading to two or more driveways and/or principal structures that may not be visible from a named road." VILAS COUNTY CODE § 28.05(6).

[7] ¶21 The Bowlers argue their road is not a "private road" within the meaning of VILAS COUNTY CODE § 28.06(3) because it does not lead to two or more driveways or principal structures. [4] It appears undisputed that the Bowlers' road does not lead to two or more driveways and that the Bowlers' residence and their rental units may not be visible from a named road. Thus, the question is whether the Bowlers' road leads to two or more "principal structures." As we explain in the following section, we conclude that the Bowlers' residence and each of their rental units is a "principal structure" under the Ordinance. Accordingly, we conclude that the road is a "private road" within the meaning of § 28.06(3) because it leads to the Bowlers' residence and their nine rental cabins.

4 Consistent with this argument, the Bowlers' brief refers to the road as a "driveway," which the Ordinance defines as a "private road serving not more than two primary structures." VILAS COUNTY CODE § 28.05(4).

¶22 We next consider whether the private road serves three or more residences or lots, as required by VILAS

COUNTY CODE § 28.06(3).[5] Unlike the phrase "private road," the Ordinance does not provide a definition of the term "residence." The Bowlers urge us to adopt what they consider a "common and ordinary" definition *409 of "residence" that requires occupancy with some degree of permanency. The Bowlers argue their rental cabins do not qualify under their preferred definition because **128 they are "temporary dwellings which are intended for temporary habitation for occupants for only part of the year." As support for their definition, the Bowlers cite several cases involving the term "residence" as applied in other legal contexts.

5 Because we conclude the Bowlers' private road serves three or more residences, it is not necessary for us to consider the County's alternative argument that the road serves three or more "lots."

¶23 It is true that some cases speak of a "residence" in a fashion that requires a degree of permanency in the occupation of the premises. This understanding of the term is particularly true in cases requiring a certain period of "residence" (or absence thereof) before the happening of a particular thing. For example, the Bowlers rely on *Miller v. Sovereign Camp Woodmen of the World*, 140 Wis. 505, 122 N.W. 1126 (1909), in which our supreme court—in dealing with an attempt to collect life insurance on an absent relative—stated: "Residence signifies a person's permanent home and principal establishment, to which whenever he is absent he has the intention of returning." *Id.* at 509, 122 N.W. 1126.

¶24 The Bowlers also rely on *Town of Carlton v. State Department of Public Welfare*, 271 Wis. 465, 74 N.W.2d 340 (1956), in which our supreme court was required to determine the "legal settlement" of certain individuals for purposes of ascertaining which of the county or the municipality was responsible for furnishing them with statutory public assistance. *Id.* at 466-67, 74 N.W.2d 340. For purposes of that statute, the court concluded that the verb "resides" was a reference to a person's domicile. *Id.* at 468, 74 N.W.2d 340. "Residence, in this connection," stated the court, "is residence with the present intent of making the place one's home, in contrast to mere presence there without such intent. ... No mere *410 pretense of residence, no passing visit, no temporary presence ... nothing short of actual abode here, with intention of permanent residence, will fill the letter or the spirit of the statute." *Id.* at 467-68, 74 N.W.2d 340.

¶25 Yet this conception of "residence" as encompassing a degree of permanency is not the only meaning that can be assigned to the term. We often consult dictionary definitions to assist us in determining the ordinary meaning of statutory language. *County of Dane v. LIRC*, 2009 WI 9, ¶23, 315 Wis. 2d 293, 759 N.W.2d 571. "Residence," to be sure, encompasses "a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary sojourn or transient visit." *Residence*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993). But the term may also have a meaning that focuses on the building's use as opposed to the subjective intent of a particular individual. To be precise, a "residence" means "a building used as a home; DWELLING." *Id.* Use of "residence" in this sense would appear to encompass use for temporary lodging, as the types of activities being undertaken within the Bowlers' rental units (e.g., eating, sleeping, bathing) are indistinguishable from the types of activities that take place in a home.

[8] [9] ¶26 The mere existence of multiple dictionary definitions does not necessarily mean a word is ambiguous. *Ho-Chunk Nation v. DOR*, 2009 WI 48, ¶23, 317 Wis. 2d 553, 766 N.W.2d 738. "Many words have multiple dictionary definitions; the applicable definition depends upon the context in which the word is used." *Kalal*, 271 Wis. 2d 633, ¶49, 681 N.W.2d 110. Explicit statements of legislative purpose are helpful in arriving at the correct interpretation; "a plain-meaning interpretation *411 cannot contravene a textually or contextually manifest statutory purpose." *Id.*

¶27 Here, the legislative body clearly had the latter meaning of "residence" in mind when it adopted the Ordinance. The Vilas County Board of Supervisors stated the intent of the Ordinance was "to facilitate **129 the naming of roads, signing of roads, assigning of addresses, location of address signs and house numbers in order to aid emergency personnel in providing fire protection, emergency medical services, law enforcement services, delivery of mail and meet other general location needs of the public." VILAS COUNTY CODE § 28.01. This purpose could hardly be met if the road-naming provision did not apply to roads leading to structures intended or used for temporary lodging. Temporary inhabitants of a structure in Vilas County, much like the County's permanent residents, may occasionally require emergency services at their location. The Ordinance's objective is to ensure that emergency personnel can easily locate persons in need to deliver such services. Adopting the restrictive meaning of "residences" urged by the Bowlers would eviscerate this explicit purpose.

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¶28 Interpreting the term "residence" to include structures intended for short-term rental is not a novel approach. In *Heef Realty & Investments, LLP v. City of Cedarburg Board of Appeals*, 2015 WI App 23, 361 Wis. 2d 185, 861 N.W.2d 797, this court considered "whether short-term rental is a permitted use for property in a single-family residential district under the City of Cedarburg's zoning code." *Id.*, ¶1. The ordinance there stated that use as a single-family dwelling was permitted, but it did not impose any time requirement on the duration of that use. *Id.*, ¶10. We concluded that under ***412** *State ex rel. Harding v. Door County Board of Adjustment*, 125 Wis. 2d 269, 371 N.W.2d 403 (Ct. App. 1985), we were required to "look at the language of the ordinance, which is about the use of the property, not the duration of that use." *Heef Realty*, 361 Wis. 2d 185, ¶11, 861 N.W.2d 797.

¶29 As a result, we rejected the city's argument that the term "residence" included an inherent temporal element. *See id.*, ¶13 ("There is nothing inherent in the concept of residence or dwelling that includes time."). Focusing on the nature of the property's use, we observed that the home in *Harding* "was designed with a kitchen, dining room, living room, and four bedrooms"—precisely the type of arrangement one would expect in a place intended for human habitation. *Heef Realty*, 361 Wis. 2d 185, ¶12, 861 N.W.2d 797. We concluded:

> This focus on the daily living connotation of "residential" gibes with the circuit court's explanation that what makes a home a residence is its use "to sleep, eat, shower, relax, things of that nature." What matters is residential use, not the duration of the use. The words "single-family," "residential" and "dwelling" do not operate to create time restrictions that the legislative body did not choose to include in the ordinance.

Id. In this case, the Bowlers argue the term "residence" implies precisely the type of durational element we rejected in *Heef Realty*. We see no reason to exclude certain residential structures from the scope of the Ordinance merely because the occupants are purchasing a short-term lease to reside in those structures.

[10] **[11]** **[12]** ¶30 Accordingly, we conclude the term "residences" in VILAS COUNTY CODE § 28.06(3) is not limited to structures intended for a degree of permanent occupancy by the same individuals. Rather, the term ***413** refers generally to structures that are intended or used for human habitation—regardless of the duration of any such habitation by any particular human. Because it is undisputed that the Bowlers' rental cabins are used for this purpose, they are "residences" under the Ordinance. The County therefore could properly ****130** name the Bowlers' private road because it serves "three or more residences." [6]

6 The Bowlers contend the circuit court lacked sufficient evidence to grant the County's summary judgment motion, focusing on the court's partial reasoning that the cabins were "residences" because they could be converted to condominiums at some point in the future. They contend there was no evidence before the court "to suggest or allow it to conclude that the rental units on the Bowlers' property were going to become condominiums." As a general rule, if a circuit court reached the correct result, we may affirm its decision even if the court used a rationale that we do not adopt. *See Correa v. Farmers Ins. Exch.*, 2010 WI App 171, ¶4, 330 Wis. 2d 682, 794 N.W.2d 259. Additionally, we apply a de novo standard of review to all issues presented in this case. *See supra* ¶¶16-17. Because we conclude the Bowlers' rental cabins qualify as "residences" under the Ordinance without regard to any potential future use as condominiums, we need not address the Bowlers' argument regarding the sufficiency of the record to support the circuit court's "condominium conversion" reasoning.

II. The County properly applied the Ordinance to assign address numbers to the Bowlers' rental structures.

¶31 As mentioned above, both the road-naming section and the address provisions of the Ordinance refer to a "principal structure." Specifically, the Bowlers challenge the County's authority to assign address numbers to their rental cabins under VILAS COUNTY CODE § 28.10(2) and (3). Section 28.10(2) states, "Each ***414** principal structure shall be assigned an address based on where the driveway to the structure intersects the named road." Section 28.10(3) states, "Where more than one principal structure exists, each structure shall be assigned an address."

¶32 The Ordinance does not define the phrase "principal structure." It does, however, contain an enumerated definition for "primary structure." A "primary structure" is "a building in which is conducted the principal use of the lot or parcel in which it is located. A primary structure may be used for residential, commercial, industrial, public-semipublic, recreation, or other." VILAS COUNTY CODE § 28.05(5). The Bowlers appear to concede the definition of "primary

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structure" applies where the phrase "principal structure" is used elsewhere in the Ordinance.

¶33 Even absent such a concession, we agree with the County that the phrases "primary structure" and "principal structure" are synonymous under the Ordinance. The phrase "primary structure" is found only three times in the Ordinance, with each use located in the definitions section. *See* VILAS COUNTY CODE § 28.05(1), (4), (5). "Primary," as used in these instances, means "first in rank or importance: CHIEF, PRINCIPAL." *Primary*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993). The definitions section of the Ordinance uses "principal structures" once, in defining a "private road," *see* § 28.05(6), and "principal structure" appears elsewhere only in the section discussing implementation of the addressing system, *see* VILAS COUNTY CODE § 28.10(2), (3). "Principal," in this context, means "most important, consequential, or influential: relegating comparable matters, items, or individuals to secondary rank." *Principal*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993). Considering the context ***415** of the statute as a whole—and the nearly identical meanings commonly ascribed to the adjectives "primary" and "principal"—we conclude the Ordinance's definition of "primary structure" also applies in instances where the Ordinance uses the phrase "principal structure."

¶34 The Bowlers—in a conclusory fashion—contend there is only one "principal ****131** structure" on their property, which is the residence out of which they conduct their business. They reach this conclusion by reasoning that there can be only one "primary" or "principal" structure on any given lot. The Bowlers argue that if their residence and rental cabins all qualify as "primary" structures, none of them are, in fact, "primary." Implicitly, the Bowlers appear to be asserting that the primary use of their lot is for residential purposes, and therefore only their residence qualifies as a "principal structure."

[13] ¶35 The main problem with the Bowlers' argument is that their reasoning tracks neither the Ordinance's language nor its purpose. The Ordinance, in adopting the uniform addressing system, states: "All homes, businesses, farms, multifamily dwellings, structures for human habitation, and other establishments, within the unincorporated areas of Vilas County shall have an assigned uniform addressing number." VILAS COUNTY CODE § 28.09(1). The Bowlers' interpretation of the provisions implementing this general requirement—in particular VILAS COUNTY CODE § 28.10(2) and (3)—would lead to an absurd result. Namely, under the Bowlers' approach, structures like their rental cabins—which, again, plainly are structures for "human habitation" and therefore are structures requiring address numbers under § 28.09(1)—would ***416** not receive addresses. We avoid unreasonable interpretations of statutes. *Kalal*, 271 Wis. 2d 633, ¶46, 681 N.W.2d 110.

¶36 Reading the Ordinance as a whole, it is evident VILAS COUNTY CODE § 28.10(2) was meant to limit the grant of addressing authority contained in § 28.09(1), which, if broadly construed, could apply to nearly every building on a property. The circuit court questioned the County about the scope of its authority under the Ordinance, asking whether a lumber company with a mill, a drying shed, a retail store, and some storage buildings—all business structures—would each be required to have a separate address. The County agreed that not all of the buildings described by the circuit court would need to be addressed. Section 28.10(2) limits the assignment of addresses to each "principal structure," ensuring that the most important or frequently occupied buildings on the property receive addresses, while buildings only tangentially involved in the principal use or uses of the property need not be separately addressed.

¶37 Moreover, the plain language of the Ordinance appears to allow for multiple uses of the same property. Although the Ordinance's definition of a "primary structure" uses the definite article "the" in referring to the "principal use" of a lot or parcel, it goes on to state that a primary structure may be used for a variety of purposes, including residential or business purposes. *See* VILAS COUNTY CODE § 28.05(5). On this record, it seems apparent the Bowlers' "principal use of the lot or parcel" involves both residential and business uses, the latter of which itself is to provide short-term residences for rent. Because the structures at issue are all used for human habitation, it makes no ***417** sense to draw a distinction between residential and business uses as the Bowlers do.

¶38 Furthermore, even if such a distinction was warranted by the Ordinance language, the Bowlers' arguments are insufficient to explain why that distinction should matter for our purposes here. First, they never explain why their "residential" use of a single building should dictate that the predominant use of their whole parcel is residential and not business-related. Specifically, the Bowlers do not address the undisputed fact that they operate nine other buildings in connection with their resort business and even operate

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their business **132 out of their home. Indeed, in their reply brief, the Bowlers assert that their home doubles as a resort lodge. Second, even if the primary use of their parcel is "residential," the Bowlers fail to explain why the nine habitable cabins they own are not also "primary structures" that are part of such use.[7] The Bowlers give virtually no consideration to the Ordinance's statement that "[w]here more than one principal structure exists, each structure shall be assigned an address." VILAS COUNTY CODE § 28.10(3).

7 Under the Bowlers' logic, the status of the cabins as "primary structures"—and therefore the County's ability to address those cabins—would change merely if the Bowlers' residence was located on a different parcel. This incongruence in the application of the Ordinance produces an absurd outcome, and we strive to avoid absurd results.

[14] ¶39 In sum, we conclude the Bowlers' residence and each of their resort cabins are "principal structures" within the meaning of VILAS COUNTY CODE § 28.10(2). Additionally, the road on their property qualifies as a "private road" because it leads to "two or more ... principal structures" under VILAS COUNTY CODE *418 § 28.05(6). The County could therefore properly name the Bowlers' road and assign addresses to their residence and the rental units.

III. The County did not exceed the authority granted by the enabling statute.

[15] **[16]** ¶40 The Bowlers alternatively contend that if the Ordinance is interpreted to include their rental cabins as structures to which separate addresses will be assigned, its reach extends "beyond that of the enabling statute." "A county's statutory authority is limited to that provided in the enabling statute." *Liberty Grove Town Bd.*, 284 Wis. 2d 814, ¶16, 702 N.W.2d 33. When an ordinance does not comply with the enabling statute, it is invalid and may not be enforced. *Id.*

¶41 The enabling statute is WIS. STAT. § 59.54(4), which permits a county board to "establish a rural naming or numbering system in towns for the purpose of aiding in fire protection, emergency services, and civil defense." Under the statute, "[e]ach rural road, home, business, farm or other establishment, may be assigned a name or number," and "[t]he names or numbers may be displayed on uniform signs posted on rural roads and intersections, and at each home, business, farm or other establishment." *Id.*

¶42 The terms "home," "business," and "farm" are, in the Bowlers' view, "more or less ... self-explanatory terms." They propose that the term "establishment" should have its common dictionary meaning, which is "a more or less fixed and [usually] sizable place of business or residence together with all the things that are an essential part of it (as grounds, furniture, fixtures, retinue, employees)." *Establishment*, *419 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993). The Bowlers assert their rental cabins do not fit any of these definitions, and they summarily argue "[t]here is only one home, business or establishment on the parcel, which is the Bowlers' permanent residence out of which they conduct their business."

¶43 The Bowlers do not explain how, under their preferred dictionary definition of that term, their rental cabins are not "establishments," as those structures are used for both business and residential purposes.[8] *See* **133 *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed."). Rather, they appear to believe that WIS. STAT. § 59.54(4) allows the County to assign only one address per home or business, regardless of how many structures are present on the property. The Bowlers posit that extending § 59.54(4) to include "every structure used for business purpose[s] would greatly expand the reach of the enabling statute." *420 They suggest a hypothetical scenario in which "a car dealership with an office, a detached shop, and a shed" on a single parcel would each be assigned a different address by the County. This result, they argue, would be generally supported by the public safety objectives of the Ordinance, but it would not be permitted under the enabling statute.

8 As noted earlier in the opinion, it is undisputed (and indisputable) that the rental cabins are "structures for human habitation," as that phrase is used in VILAS COUNTY CODE § 28.09(1). *See supra* ¶35. While WIS. STAT. § 59.54(4) itself does not include that particular phrase in its enumerated list of places that may be assigned a name or number, "structures for human habitation" are certainly a type of "other establishment" under § 59.54(4). The Ordinance in § 28.09(1) merely enumerates two additional types of "other establishments"—namely, multifamily dwellings and structures for human inhabitation. The Bowlers do not argue, and likely could not argue, that by including "structures for human habitation" among those "other establishments" that could be assigned

> addresses, the County was acting outside the scope of the enabling statute. And, if "structures for human habitation" fall within the purview of § 59.54(4), then the County was clearly within its authority to assign addresses to the structures at issue here.

[17] ¶44 We disagree with the Bowlers' interpretation of WIS. STAT. § 59.54(4) and how it applies in this context. The Ordinance here does not purport to allow the County to assign an address to every building merely because it is used for a business purpose. Rather, under the Ordinance, the County is allowed to assign an address to each "primary" or "principal" structure involved in a particular use of the property. This allowance is compatible with the enabling statute, which allows for the County to assign an address to each "establishment." The rental cabins on the Bowlers' property appear to satisfy the Bowlers' preferred definition of an "establishment," as each is a primary or principal structure used for residential and business purposes together with all the things that are an essential part of those uses. Given the Bowlers' lack of a developed argument on the point, we conclude the cabins are "establishments" and, therefore, are valid subjects for addressing under § 59.54(4).

By the Court.—Judgment affirmed.

All Citations

388 Wis.2d 395, 2019 WI App 43, 933 N.W.2d 120

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125 Wis.2d 269
Court of Appeals of Wisconsin.

STATE ex rel., John T. HARDING, Plaintiff-Appellant,
v.
DOOR COUNTY BOARD OF ADJUSTMENT
and Leslie E. Cowen, Defendants-Respondents.

No. 84–1670
|
Submitted on Briefs April 8, 1985.
|
Opinion Released June 11, 1985.
|
Opinion Filed June 11, 1985.
|
Review Denied.

Synopsis

Property owner sought building permit that would allow him to build home for sale to 13 owners who would each have right to occupy home for four weeks a year. At writ of certiorari review, the Circuit Court, Door County, Edwin C. Stephan, J., held that proposed use violated county zoning ordinance that restricted use of property to single family dwelling, and owner appealed. The Court of Appeals, La Rocque, J., held that proposed use fell within definition of single family dwelling.

Judgment reversed.

West Headnotes (3)

[1] Zoning and Planning Certiorari

414 Zoning and Planning
414X Judicial Review or Relief
414X(A) In General
414k1572 Nature and Form of Remedy
414k1575 Certiorari
(Formerly 414k565)

When no motion to quash writ of certiorari is made and issuance of writ is not discretionary, it is not appropriate to quash writ in order to affirm board of adjustment's decision. W.S.A. 59.99(1).

[2] Zoning and Planning Ambiguity

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(A) In General
414k1206 Meaning of Language
414k1208 Ambiguity
(Formerly 414k231)

Ambiguous terms in ordinance are construed in favor of free use of property.

4 Cases that cite this headnote

[3] Zoning and Planning One-family, two-family, or multiple dwellings

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(B) Architectural and Structural Designs
414k1229 One-family, two-family, or multiple dwellings
(Formerly 414k256)

Although different family would occupy building each week, property owner's proposed use fell within definition of "single family dwelling" in county ordinance, where home was designed for and would be occupied exclusively by one family at a time, building's purpose was to provide living quarters for family, proposed building's floor plan had kitchen, dining room, and living room in addition to four bedrooms, and family occupying building each week would occupy building to exclusion of other families.

4 Cases that cite this headnote

Attorneys and Law Firms

****404 *270** Pinkert, Smith, Koehn, Weir & Jinkins, Mark A. Jinkins and Roger Pinkert, Sturgeon Bay, for plaintiff-appellant.

Becker and Phillips and Mark A. Phillips, Brookfield, for defendants-respondents.

Before CANE, P.J., and DEAN and LaROCQUE, JJ.

Opinion

LaROCQUE, Judge.

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[1] John Harding appeals a circuit court judgment[1] affirming the Door County Board of Adjustment's revocation of his building permit. Harding owns property zoned for single family residential use. He seeks a building permit that would allow him to build a home for sale to thirteen owners who each would have the right to occupy the home for four weeks a year. At the sec. 59.99(1), Stats., writ of certiorari review, the court held that Harding's proposed use violates the county zoning code that restricts the use of the property to single family dwellings. Because the zoning ordinance ***271** does not prohibit Harding's proposed use, we reverse the judgment.

1 The circuit court decision ruled on the merits of the controversy and also quashed the writ of certiorari. When no motion to quash is made and the issuance of the writ is not discretionary, *see* § 59.99(1), Stats., it is not appropriate to quash the writ in order to affirm the board's decision. *See State ex rel. Park Plaza Shopping Center, Inc. v. O'Malley,* 59 Wis.2d 217, 218–19, 207 N.W.2d 622, 623 (1973).

[2] The zoning ordinance defines a single family dwelling as a detached building designed for or occupied exclusively by one family. The ordinance defines "family" as one or more persons related by blood or marriage occupying the premises and living together as a single housekeeping unit. We must strictly construe this ordinance to favor the free use of property.[2] *See Crowley v. Knapp,* 94 Wis.2d 421, 434, 288 N.W.2d 815, 822 (1980). Unless the proposed building is unambiguously something other than a single family dwelling under the county ordinance, the proposed use of the building is not prohibited. *See Cohen v. Dane County Board,* 74 Wis.2d 87, 92, 246 N.W.2d 112, 114 (1976).

2 *State ex rel. B'nai B'rith Found. v. Walworth County Bd.,* 59 Wis.2d 296, 304, 208 N.W.2d 113, 117 (1973), states that the power to enact zoning ordinances is liberally construed in favor of the municipality. Ambiguous terms in an ordinance, however, are construed to favor the free use of property. *Cohen v. Dane County Board,* 74 Wis.2d 87, 91, 246 N.W.2d 112, 114 (1976).

[3] Harding's proposed use falls within the definition of a single family dwelling. His home is both designed for and will be occupied exclusively by one family. "Design" means "to ... have ... as a purpose" and "to draw a ... sketch...." Webster's Third New International Dictionary 611 (1976). The building's purpose is to provide living quarters for a family. The proposed building's floor plan has a kitchen, dining room, and living room in addition to four bedrooms. The building would be occupied exclusively by one family. Although a different family would occupy the building each week, that one family would occupy the building to the exclusion of the other twelve families. The ordinance fails to require occupancy over a period of time, and we ***272** cannot impose such a requirement. We conclude that the ordinance does not prohibit Harding's proposed use.

Judgment reversed.

All Citations

125 Wis.2d 269, 371 N.W.2d 403

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KeyCite Yellow Flag - Negative Treatment
Distinguished by Vilas County v. Accola, Wis.App., May 12, 2015

361 Wis.2d 185, 2015 WI App 23
Court of Appeals of Wisconsin.

HEEF REALTY AND INVESTMENTS, LLP and Sandra Desjardin, Plaintiffs–Respondents,
v.
CITY OF CEDARBURG BOARD OF APPEALS, Defendant–Appellant. †

No. 2014AP62
|
Submitted on Briefs Oct. 20, 2014.
|
Opinion Filed Feb. 4, 2015.

Synopsis

Background: Homeowners appealed citations that were issued to them for violating ordinance that allegedly prohibited them from engaging in short-term rentals of their homes in a single-family district. The Circuit Court, Ozaukee County, Paul V. Malloy, J., reversed. City appealed.

[Holding:] The Court of Appeals, Neubauer, P.J., held that short-term rental was a permitted use in a single-family residential district under zoning code.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (6)

[1] Certiorari Scope and Extent in General

73 Certiorari
73II Proceedings and Determination
73k63 Review
73k64 Scope and Extent in General
73k64(1) In general

On certiorari, Court of Appeals reviews the decision of the board, not the circuit court.

1 Case that cites this headnote

[2] Certiorari Scope and Extent in General

73 Certiorari
73II Proceedings and Determination
73k63 Review
73k64 Scope and Extent in General
73k64(1) In general

Certiorari review is limited to whether the board: (1) kept within its jurisdiction, (2) acted according to law, (3) did not act arbitrarily or unreasonably or according to its will and not its judgment, and (4) made a decision based on evidence one might reasonably use to make the determination in question.

2 Cases that cite this headnote

[3] Zoning and Planning Strict or liberal construction in general

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(A) In General
414k1203 Strict or liberal construction in general

The power to enact zoning ordinances is broadly construed in favor of the municipality.

4 Cases that cite this headnote

[4] Zoning and Planning Free or unrestricted use of property

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(A) In General
414k1204 Free or unrestricted use of property

Zoning ordinances are in derogation of the common law and, hence, are to be construed in favor of the free use of private property; to operate in derogation of the common law, the provisions of a zoning ordinance must be clear and unambiguous.

5 Cases that cite this headnote

[5] Zoning and Planning Hotels, lodging, and short-term rentals

414 Zoning and Planning
414V Construction, Operation, and Effect

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414V(C) Uses and Use Districts
414V(C)1 In General
414k1259 Hotels, lodging, and short-term rentals (Formerly 414k1229)

Short-term rental was a permitted use in a single-family residential district under city's zoning code; ordinance listed single-family dwellings as a permitted use in such a district, the words "single-family," "residential," and "dwelling" did not operate to create time restrictions that city did not include in the ordinance, which did not clearly and unambiguously prohibit this use.

9 Cases that cite this headnote

[6] Zoning and Planning One-family, two-family, or multiple dwellings

414 Zoning and Planning
414V Construction, Operation, and Effect
414V(B) Architectural and Structural Designs
414k1229 One-family, two-family, or multiple dwellings

If a city wishes to draw a line requiring a certain time-period of occupancy for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law.

2 Cases that cite this headnote

Attorneys and Law Firms

****798** On behalf of the defendant-appellant, the cause was submitted on the briefs of Ronald S. Stadler and Aaron J. Graf of Gonzalez Saggio & Harlan LLP, Mallery & Zimmerman, S.C., Milwaukee.

On behalf of the plaintiffs-respondents, the cause was submitted on the brief of Brad L.F. Hoeschen and Jordana Thomadsen of Chernov, Stern & Krings, S.C., Milwaukee.

A nonparty brief was filed by Thomas D. Larson of Madison, for Wisconsin Realtors® Association.

Before NEUBAUER, P.J., REILLY and GUNDRUM, JJ.

Opinion

NEUBAUER, P.J.

***187** ¶ 1 The question presented is whether short-term rental is a permitted use for property in a single-family residential district under the City of Cedarburg's zoning code. The City of Cedarburg Board of Appeals (the Board) decided that the City's zoning ordinances did not permit the short-term rental of homes in a single-family residential district. The owners of two homes challenged this decision. We agree with the homeowners that the Board erred in interpreting the ordinances to preclude short-term rentals. Such a restriction on the free use of private property must be done clearly and unambiguously in the ordinances. As written, the ordinances permit short-term rental of homes in a single-family residential district. We affirm the order of the circuit court, which reversed the decision of the Board.

BACKGROUND

¶ 2 The owners of two homes (the Owners) initiated this suit after the Board told them they could not use their homes for short-term rentals. James and Cathy Radmann (d/b/a HEEF Realty) purchased a second home to use for short-term rental and eventual retirement. The Radmanns started renting the house out in September 2012, and on September 12, 2012, they got a notice from the City informing them that the ***188** property use violated City Ordinance 13–1–46 (the Ordinance). *See* CEDARBURG, WIS., ZONING CODE (hereinafter Zoning Code) art. C, § 13–1–46 (2015). Sandra Desjardin started renting out her ****799** property for short-term rentals in June 2012, and on September 12, 2012, and on October 10, 2012, Sandra received notices from the City stating that her property use violated the Ordinance. [1]

¶ 3 The Owners appealed the citations, and the Board denied their appeals. The Owners brought complaints for certiorari review, which were consolidated. The circuit court found that the homes are single-family dwellings and that the Board made an error of law when it determined that short-term rental was not a permitted use. The Board appealed that decision to this court.

DISCUSSION

Standard of Review

[1] [2] ¶ 4 On certiorari, we review the decision of the Board, not the circuit court. *Murr v. St. Croix Cnty. Bd. of*

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Adjustment, 2011 WI App 29, ¶ 19, 332 Wis.2d 172, 796 N.W.2d 837. Our review is limited to whether the Board "(1) kept within its jurisdiction, (2) acted according to law, (3) did not act arbitrarily or unreasonably or according to its will and not its judgment, and (4) made a decision based on evidence one might reasonably use ***189** to make the determination in question." *Winkelman v. Town of Delafield,* 2000 WI App 254, ¶ 3, 239 Wis.2d 542, 620 N.W.2d 438.

The Parties' Arguments

¶ 5 The Board argues that its interpretation of the Ordinance is reasonable and should not be overturned on certiorari review. More specifically, the Board argues that to qualify as a single-family dwelling under the Ordinance, the property must be the occupant's established residence. The Board maintains that the important distinction is residential versus transient and looks to voting requirements to color its definition of residency.

¶ 6 The Owners argue that that the plain language of the Ordinance permits their use, that if the Ordinance is ambiguous it should be construed in favor of the free use of property, and that Wisconsin case law and case law from other jurisdictions makes clear that short-term rentals are a permitted use of a single-family dwelling. The Owners point out that the City did allow long-term rentals and that there was no definition of the minimum time period allowed. They also contend that the allowance of long-term rentals undercuts the Board's argument that short-term rentals constitute commercial, rather than residential, use. Furthermore, the Owners argue that the building inspector's testimony that second homes and vacation homes are permitted within residential zones is contrary to the Board's primary address argument and that all of these inconsistencies underscore the ambiguity of the Ordinance.

***190** *General Zoning Principles*

[3] **[4]** ¶ 7 The power to enact zoning ordinances is broadly construed in favor of the municipality. *State ex rel. B'nai B'rith Found. v. Walworth Cnty. Bd. of Adjustment,* 59 Wis.2d 296, 304, 208 N.W.2d 113 (1973). However, "[z]oning ordinances are in derogation of the common law and, hence, are to be construed in favor of the free use of private property." *Cohen v. Dane Cnty. Bd. of Adjustment,* 74 Wis.2d 87, 91, 246 N.W.2d 112 (1976). To operate in derogation of the common law, the provisions of a zoning ordinance must be clear and unambiguous. *Id.* Here, "[u]nless the ****800** proposed [use] is unambiguously something other than a single family dwelling under the ... ordinance, the proposed use ... is not prohibited." *State ex rel. Harding v. Door Cnty. Bd. of Adjustment,* 125 Wis.2d 269, 271, 371 N.W.2d 403 (Ct.App.1985) (citation omitted).

Application

[5] ¶ 8 We first look to the language of the Ordinance. The Ordinance states, in part:

> RS–5 SINGLE–FAMILY RESIDENTIAL DISTRICT
>
> ....
>
> (b) **Permitted Uses.**
>
> (1) Single-family dwellings.
>
> (2) Family day care home.
>
> (3) Foster family home.
>
> (4) Community living arrangements which have a capacity for either (8) or fewer persons served by the program.
>
> (5) Essential services.

***191** Zoning Code art. C, § 13–1–46. Thus, the Ordinance lists "single-family dwellings" as a permitted use in a "single-family residential district." An additional ordinance in effect at the time of the citations defined "dwelling" as "[a]ny building or portion thereof designed or used exclusively as a residence and having cooking facilities, but not including boarding or lodging houses, motels, hotels, tents, cabins, or mobile homes." [2]

¶ 9 Regarding the meaning of "single-family dwelling," *Harding* is squarely on point and mandates the construction of the Ordinance to favor the free use of property. In *Harding,* the proposed use was a time-share where thirteen families would own the property and each would use it for four weeks per year. *Harding,* 125 Wis.2d at 270, 371 N.W.2d 403. The county board of adjustment revoked Harding's building permit under the county ***192** zoning ordinance. *Id.* at 270, 371 N.W.2d 403. The circuit court affirmed the revocation. *Id.*

On appeal, the court reasoned that this use constituted a single family dwelling because only one single family would be staying in the property at a time. *Id.* at 271, 371 N.W.2d 403. The court noted that the property was "both designed for and will be occupied exclusively by one family." *Id.* "Although a different family would occupy the building each week, that one family would occupy the building to the exclusion of the other twelve families. The ordinance fails to require occupancy over a period of time, and we cannot impose such a requirement." *Id.* at 271–72, 371 N.W.2d 403. The court concluded that the ordinance did not prohibit Harding's proposed use. *Id.* at 272, 371 N.W.2d 403.

****801** ¶ 10 The present case is almost exactly like *Harding.* While the short-term occupants of the homes here will not have a long-term ownership interest as in *Harding,* they will purchase a short-term lease. Other than this difference, the cases are essentially the same. The properties here are designed for use by one family, just like the property in *Harding.* The Ordinance here permits single-family dwellings in a single-family residential zone, just like in *Harding.* And, just like in *Harding,* only one family will use each home at a time. The Ordinance here, like the one in *Harding,* does not require occupancy over a period of time. We must construe the Ordinance in favor of the free use of property and cannot impose time/occupancy restrictions or requirements that are not in the zoning scheme.

¶ 11 *Harding*'s conclusion is clear: we look at the language of the ordinance, which is about the use of the property, not the duration of that use. *Harding* rules out the Board's arguments about voting or fixed habitation. The proposed time-share property in *Harding* ***193** would not be anyone's primary residence, primary address, fixed habitation, or place by which he or she would determine where to vote. Even so, the proposed time-share in *Harding,* like the rental use here, was a permitted use under the single-family residential zone because the ordinance did not remove it from that category.

¶ 12 The Board argues that *Harding* is not binding authority because *Harding* "did not turn upon whether renting to tourists and other transient guests constituted use as a 'residence.' " *Harding* focused on whether the property was to be "occupied exclusively by one family." *Id.* at 271, 371 N.W.2d 403.

> Because the zoning ordinance does not prohibit Harding's proposed use, we reverse the judgment.
>
> ... We must strictly construe this ordinance to favor the free use of property. Unless the proposed [use] is unambiguously something other than a single family dwelling under the county ordinance, the proposed use of the building is not prohibited.
>
> Harding's proposed use falls within the definition of a single family dwelling. His home is both designed for and will be occupied exclusively by one family.... The building's purpose is to provide living quarters for a family. The proposed building's floor plan has a kitchen, dining room, and living room in addition to four bedrooms.... Although a different family would occupy the building each week, that one family would occupy the building to the exclusion of the other twelve families. The ordinance fails to require occupancy over a period of time, and we cannot impose such a requirement.

Harding, 125 Wis.2d at 270–72, 371 N.W.2d 403 (citations and footnote omitted). *Harding* notes that the home there was designed with a kitchen, dining room, living room, and ***194** four bedrooms. *Id.* at 271, 371 N.W.2d 403. This focus on the daily living connotation of "residential" gibes with the circuit court's explanation that what makes a home a residence is its use "to sleep, eat, shower, relax, things of that nature." What matters is residential use, not the duration of the use. The words "single-family," "residential" and "dwelling" do not operate to create time restrictions that the legislative body did not choose to include in the ordinance.

[6] ¶ 13 What *Harding* was about, and what this case is about, is whether a zoning board can arbitrarily impose time/occupancy restrictions in a residential zone where there are none adopted democratically by the City. *Harding* tells us that the designation as a single family dwelling ****802** does not, without more, distinguish between one or thirteen families as owner/occupants or between short-term and long-term rentals. There is nothing inherent in the concept of residence or dwelling that includes time. The City offers no authority that anything about the concept of "residential" distinguishes between short-term and long-term occupancy. If the City is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law. *See, e.g.,* *Lowden v. Bosley,* 395 Md. 58, 909 A.2d 261 (2006) (nothing in restrictive covenant that required residential use distinguished between long-term and short-term rentals); *Brown v. Sandy City Bd. of Adjustment,*

957 P.2d 207 (Utah Ct.App.1998) (ordinance that allows use of dwelling for occupancy by single family and does not limit use by duration of occupancy does not prohibit short-term rentals).

***195** ¶ 14 The Board interpreted the Ordinance to preclude short-term rental of a single-family dwelling in a single-family residential district even though the Ordinance did not clearly and unambiguously prohibit this use. In doing so, the Board did not act according to law. We are bound by *Harding*.

See *Cook v. Cook,* 208 Wis.2d 166, 189, 560 N.W.2d 246 (1997) (only supreme court can withdraw or modify court of appeals opinions). Therefore, we affirm the circuit court's order reversing the decision of the Board.

Order affirmed.

All Citations

361 Wis.2d 185, 2015 WI App 23, 861 N.W.2d 797

Footnotes

† Petition for review denied June 12, 2015.

1 While the parties provide us with information about how much they invested in upgrading their properties and about discussions they had with officials regarding the use of the properties as short-term rentals, none of that is relevant to the issue presented.

2 The parties both cite to this definition of dwelling but do not provide a record cite for this ordinance, nor do we find the ordinance in the record except as set forth in documents written by the parties. However, the parties do not differ on the wording, and we have confirmed the previous wording of the ordinance. *See* CEDARBURG, WIS., ORDINANCE No.2014–04, § 13–1–240(b)(45). The current version omits "designed or" from "designed or used exclusively as a residence." CEDARBURG, WIS., ZONING CODE art. C, § 13–1–240(b)(45) (2015).

The Owners argue that the disjunctive "designed or used" as a residence in the former definition of dwelling unambiguously renders their short-term rental a permitted use, as their homes were obviously designed for residential use. The Board counters that a literal interpretation of this definition would lead to absurd results, as a home designed as a residence could be used "as a tavern, taco stand, strip club or a nuclear waste treatment facility." Given our decision, we need not reach this argument. *See* *Sweet v. Berge,* 113 Wis.2d 61, 67, 334 N.W.2d 559 (Ct.App.1983) (appellate court need not address all issues raised when deciding case on other grounds).

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AMICUS MEMORNDUM
Submitted in connection with the
zoning appeal for N2047 Pine Beach Road South,
which its set for hearing on December 4, 2024.

INTRODUCTON

This is an Amicus Memorandum (Memorandum) daed as of November 19, 2024, submitted by certain concerned citizens relating to the commercial use of the new resort constructed by American Orthodontics (AO) on N2047 Pine Beach Road South (the "AO Resort").

The Town of Holland (Town) relies on a legal opinion dated as of October 14, 2024 (Opinion) from the firm of Antoine, Hoeft & Eberhardt S.C. (Town Lawyer) to claim that the proposed use as a resort is not a "commercial" use or purpose and thus permitted in an R-1 district[1].

However, the Town's Opinion contains numerous flaws, defies common sense, and **fatally relies on the wrong legal standard** of what is "commercial" use from the Forshee case, as detailed below.

One of the undersigned, Susan LaBudde, is not currently a party to the appeal but seeks to submit this Memorandum in lieu of public comments due to a conflicting medical procedure the day of the zoning board hearing; I will be under a medical disability and unable to attend the open meeting

ARGUMENT

1. The Town's Definition of "Commercial Use" is Extremely Narrow and Ignores Common Sense and Applicable Authorities. It also Has No Support in the Forshee Case, Which Was Decided on Completely Separate Grounds.

A. It Is Beyond Dispute that the Definition of "Commercial" Activities and Uses Includes More than Just the Final Step (i.e., the Exchange of

[1] It is worth noting that, while the Town seems to present the Town Layer's Opinion as if it considered all sides and legal arguments and interpretations, the Opinion reads like the Town Lawyer was given a particular conclusion first and asked to find support only for that pre-determined conclusion, ignoring other applicable legal standards. There is no other way to account for the Opinion's complete failure to address all the legal opinions in the Forshee case, including that (as discussed below), there is NO majority opinion or majority adopted legal reasoning; only majority agreement on the procedural handling of the case before it. There are three different sets of legal reasoning in Forshee, voted on 3-3-1 by the seven justices. Not one justice offered, nor did the lead opinion adopt, any alternative or narrower definition of "commercial activities" than as these terms are defined under Wisconsin law and commonly understood.

Money) in a Sales Transaction. The Town's Legal Opinion's Focus Solely on Direct Purchase Transactions Ignores and All the Other Commercial Activity Leading up to the Conclusion of a Sale.

The Town's opinion applies a tunnel vision interpretation of "commercial" use. It says that a commercial use is involved only when there is a direct exchange of payment directly related to a specific service or product. Because AO's customers and potential customers are not paying fees or other consideration to rent or occupy the AO Resort, says the Town, it is not a commercial use.[2]

However, commercial activity routinely involves conduct and expenditures that are not directly related to the sale of a product or service or just the final act in a purchase transaction. Businesses large and small engage in research, product development, and marketing efforts that often involve give-aways and freebies, including comping of dining, travel, lodging entertainment. All have the commercial purpose of promoting sales and profits.

Loss-lead sales and freebie giveaways are common commercial practices. For example, pharmaceutical companies give away trips, sports tickets and travel packages to existing and potential doctors for free, trying too build brand loyalty and goodwill. It is also guaranteed that such businesses deduct such expenses as "ordinary and necessary business expenses" under Section 162 of the Internal Revenue Code.

Marketing, public relations, social media and give-away campaigns are all integrally related to the ultimate goal of making a sale. All such activity is commercial—and all such activity is considered business-related for purposes of the Wisconsin and Federal tax laws.

AO's Resort falls squarely in this category of corporate promotional purposes.

The fatal flaw in the Opinion is that it mistakenly looks at the non-rental aspect of the AO Resort in isolation rather than examining it in context as part of a marketing strategy integral to AO's business enterprise.

B. The Town Has Willfully Ignored All Sorts of Other Relevant Facts and Legal Determinations That Count Towards Finding a "Commercial" Use.

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[2] The Town's legal Opinion also sets up the straw man of defining a "commercial property" to knock that down. No one has argued that the AO Resort is a rental or other income-producing property, so this is simply irrelevant. By seeming to conflate "commercial use" with "commercial property", the Opinion appears to be trying to say a narrow subset of commercial activity applies or subsumes the larger meaning. That's just silly.

How AO itself treats the AO Resort on its **own** books and records, and for state and federal **income tax purposes**, should be dispositive in determining whether it is a commercial use.

Nevertheless, it appears that, despite the urging to do so at public hearings, the Town has not sought any such information and has not inquired whether:

(1) AO treats the property on its own books and records as a business asset, for accounting purposes.

(2) AO deducts on its corporate income tax returns as business expenses the property taxes, maintenance and other expenses to carry the AO Resort[3]. Further, does AO apply other tax treatment not available to residential properties, such as taking depreciation expense deductions?

(3) How is the AO Resort insured? Is there a standard homeowner's insurance policy covering it or is it carried under a commercial insurance policy as part of AO's other (extensive) portfolio of vacation properties?

Why isn't the Town seeking such information as part of its due diligence?

2. The Legal Authorities Cited by the Town's Lawyer in the Opinion are Readily Distinguishable and are Deeply Problematic as Wider Legal Precedent; and the Town's Lawyer Applies the Wrong —or Non-Existent—Legal Standard from the Forshee Case.

The Legal Opinion relies primarily on the Forshee vs. Neuschwander case, and both overstates and misconstrues its guidance as precedence in several respects, both factually and as legal precedent. This case did not narrow the definitions of "commercial" activities in Wisconsin law but was decided on other technical, grammatical grounds.

A. The Examples Cited in the Town's Legal Opinion are Readily Distinguishable on Factual Grounds.

First, easy factual distinctions: the Town's legal Opinion refers to a variety of quasi commercial uses allowable "within a single family dwelling" because they "have little or no effect on the neighboring property owners", and involve limited single person

[3] Looking at tax treatment to determine the character and use of property not only makes sense, Justice Ann Walsh Bradley in her part of the Forshee opinion notes that the property at issue was treated as section 1031 property—and only commercial and not residential properties can be involved in Section 1031 like-kind exchanges. See Para. 83. Looking at the tax treatment of a property is relevant, probative and admissible. Why isn't the Town seeking to undertake a complete and thorough analysis?

cottage-type or home office businesses such as a beautician, an architect and artist, and anyone inside using a computer.

All of these examples a clearly distinguishable by the scope and location of the uses by AO's resort guests, which will primarily take place outside at a scale to routinely disrupt the quiet character of a small residential neighborhood.

From the Town's own legal Opinion, it is undisputed that the AO Resort has nine (9) bedrooms and 5.5 bathrooms, capable of sleeping up to 18 people at any one time, with parking for 6 vehicles. (Opinion at pages 1-2). However, in the sole common area there is seating for only eight (8) people. AO intends the heaviest use from April through November. *Ibid (emphasis added)*.

The inescapable conclusion is that occupants will spend the majority of their time outside rather than inside. This is a key fact that distinguishes the AO Resort from the every example it provides[4].

The Town's list of solo practitioner, cottage-industry type uses are thus completely distinguishable because:

- Such uses are *incidental* to the primary purpose and use of the residence as a personal residence. The person conducting the business likely does it in one room or a small portion of the house.

- Such uses are all explicitly inside the residence with "little or no" impact on neighbors. Here, however, AO has essentially stated that, since its 18 occupants cannot all fit within a common area limited to seating for 8 persons, the majority of the use and users will be outside. The predominance of outside use is underscored by AO's determination that use will be "seasonal," that is, during the warm outdoor months of April - November.

An unending stream of up to 18 people congregating on the grounds and beach will routinely disturb neighbors with noise and, very likely, vacation-style drinking, littering and late night disturbances. Not occasionally, but day in and day out for nine months of the year. These facts are utterly different in degree and kind from the inside solo-practitioner examples cited by the town.

B. The Town's Attorney Misplaces Reliance on the Forshee Case. While a Majority of Justices Agreed with the *Procedural Result* in that Case, A Majority of Justices Also Explicitly Repudiated the Lead Opinion's *Legal*

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[4] It is interesting that, as the Justices in the Forshee case noted, that the property at issue was on a large, 2.2 acre parcel, and that the nuisance aspects might present differently if on a smaller parcel with houses close together. What about the rights of neighbors where the offending property "is not so distant, but rather the front doors are separated by only a few feet? The lead opinion is silent." A.W. Bradley at para. 90.

***Reasoning*. Not only did the Court in Forshee Not Adopt Any Narrow Definition of "Commercial Activity" it Left Untouched the Broader, Common Sense Definitions Set Forth in Wisconsin Law. Forshee is a Case Turning on Grammar, Not Substantive Interpretations.**

The Forster case is highly unusual in that a majority of Justices agreed on the procedural disposition of the case but disagreed on the legal analysis made by the lead opinion writer.

The Forshee opinion does not have the precedential weight and scope that the Town's Opinion attributes to it because the Town's Attorney glosses over key limitations called out by the four (4) of the seven (7) Wisconsin Supreme Court Justices in their written remarks.

The Supreme Court of Wisconsin has seven justices; and while six justices joined in the procedural disposition of the case before them, there are in fact three separate and contradictory lines of legal reasoning. That is, a majority of justices were of the opinion that the reasoning in the lead opinion is wrong and all the justices left untouched the much broader standard interpretations of what constitutes "commercial" activity enshrined in Wisconsin law.

Judge Ann Walsh Bradley in her dissent cautions that there is no 'majority' view at all as to legal reasoning and virtually no precedential scope and wider value of the opinion beyond the procedural disposition of the case before it.

There is no "majority" opinion, she writes, only a "lead opinion, and warns:

> "I use the term 'lead' opinion for two reasons. First, I am concerned that without this cue, the reader may **mistakenly believe that the lead opinion has any precedential value**. Although six justices join in the mandate of the opinion to affirm the court of appeals … it represent the reasoning of only three justices. [Three other justices] Justices Abrahamson, Rebeccas Grassl Bradley and Kelly joined in the mandate, but they would rely on **contrary** reasoning.
>
> "Although set forth in three separate opinions, four justices disagree with the reasoning of the lead opinion. Contrary to the lead opinion, four justices determine" they key legal issue differently from the majority. [Emphasis added. See, footnote 1 to paragraph 76.]

So while there is a "majority" opinion as to how to resolve the actual dispute before it, the lead opinion writer's legal analysis was effectively outvoted by majority of four versus three.

The Forshee case presented a narrowly drafted restrictive covenant prohibiting "commercial activity" from taking place "on" the few subject parcels. The lead opinion's three justices adopted the literalistic, tunnel-vision view that because collecting rental payments did not occur "on" the property itself, no commercial activity took place there. The three lead opinion justices also took the view that the language of the restrictive covenant was "ambiguous", and thus applied technical procedural ordering rules of construction rather than actually consider the substantive matters. They did not offer any definition whatsoever of "commercial activity."

The central issue for the justices was whether the restrictive covenant was legally "ambiguous" or not, not on determining the scope of the definition of "commercial activity." And because the lead opinion found the covenant ambiguous, it thus invoked a set of standard, technical ordering rules to apply to dispose of the case: construing the "ambiguity" against the party invoking it, disabling the restrictive covenant. In fact, the lead opinion didn't even bother to provide an alternative definition of "commercial activity" —because it didn't need to. And, because it was applying technical procedural ordering rules of interpretation, it also did not provide any analysis or weighing of competing interests, as would normally occur in substantive treatment of the issues.[5]

A majority of justices, however, rejected the argument that "commercial activity" was ambiguous and effectively rejected any narrow definition of "commercial" activity—in fact, they left untouched the definition of "commercial activity" from the case law and authorities cited throughout the opinion.

For example Justice Abrhamson noted the "term 'commercial activity' refers to an activity undertaken with the intent to profit." This was the position of the circuit and appeals court and in a substantial string of precedents cited by her. [See para. 37; citations omitted]. In fact, as Justice Abrahmson noted, even though the term "'commercial activity. … [is] breathtaking in scope," it really is not "reasonably susceptible to more than one interpretation." Para.38 (and noting the lead opinion offers no alternative definition of "commercial activity").

Similarly, Justice Bradley noted that the rental activity at issue was "plainly 'commercial activity'" and "relates to commerce and has profit as its chief aim." [A.W Bradley dissent at para.76]. As she notes, consistent with common sense: "**A profit motive was the entire basis of the relationship**. … The very presence of the renters on the property is the result of a commercial exchange. Absent payment, the renters would not be able to engage in any activities on the property, such as eating , sleeping and recreating." Emphasis added, para. 82.

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[5] See, *e.g.*, Abrahmson concurrence at para. 38; and A.W.Bradly at paras. 91-94, noting the failure of the lead opinion to engage in an analysis of competing interests, or the wider implications of its "truncated" analysis. Para 87.

Two other justices who also rejected the lead opinion's determination of ambiguity, also noted that the scope of "commercial activity" was not before the court for review because of the extremely narrow language of the restrictive covenant, which presented only a location-specific prohibition." Justice Kelly, at para. 66-68, joined by Justice Grassl.

The Town's reliance on the Forshee decision to support any narrow interpretation of "commercial activity" is therefore misplaced, as a majority of justices either relied on a much broader definitions from settled Wisconsin law or treated any definition as not relevant because of their focus on a technical rather than substantive resolution of the case. The lead opinion justices did not offer any alternative definition at all of "commercial activity …on"; once they decided this prepositional phrase was "ambiguous", they pivoted to a disposition based on ordering rules of interpretation and side-stepped substantive matters.

C. The Forshee Opinion Is Also Distinguishable on Other Legal and Factual Grounds Because of its Unique Facts and Limited Application.

In Forshee, the restrictive covenant prohibited "commercial activity …***on***" the subject lots; it was purely a locational limitation. As the majority of justices pointed out, this is narrower and different from a restriction prohibiting a specified "**use**." See, eg.g, Par. 47, emphasis added.

The Forshee case is also distinguishable in that it involves a restrictive covenant affecting just a few properties, not a zoning interpretation affecting every R-1 residential district. This significant difference in effect should give the Zoning Board significant pause.

The fact that Forshee essentially involves an argument about grammatical ambiguity rather than any analysis of substantive legal issues or weighing of competing interests, should make the Town extremely cautious according its flawed and minority legal reasoning any weight as precedent.

D. The Town Opinion Misconstrues the Literal Human Use of the Property and Ignores the Commercial Use, Intentions, and Relationships of the Occupants to AO.

But for their having a business relationship with AO as either an existing or potential customer of AO, the occupants would have no access to or use of the AO Resort.

The Town's legal Opinion appears to say that because guests of AO flush the toilet and raid the fridge like any other residential occupant—that is, they use it for specific physical needs for shelter and food, which are human concerns—means this excludes business and commercial uses and intentions.

Such a view is disingenuous as best.

Carried to its logical conclusion, to the extent any business employees people who eat, toilet, breathe and are sheltered on the premises, such uses are personal and not business.

Such businesses would have to take into account the literal physicality of its workers, businesses would have to allocate between personal and business use in deducting expenses relating to its facilities and employees, insuring their facilities, and even applying regulations. Similarly, non-profits occupying office spaces would have to distinguish between personal and charitable uses and pay property tax and income tax on all aspects allocable to human personal use—even though such persons are there primarily due to an economic, business relationship as an employee or independent contractor.

This defies common sense and how businesses operate and are treated for tax, insurance, regulatory and operational purposes. When AO guests are using the AO Resort, they will be using it solely as a direct result of their business, commercial relationship with AO as customers or potential customers.

E. The Town Must Take Into Account Potential Unintended Consequences if it Claim's AO's Resort is a Single Family Rather than Commercial Use.

If the Town concludes that AO's Resort does not constitute a commercial use, what is to prevent other large group uses of single family residences in R-1 zones for similar non-residential, congregant-intensive activities?

For example, what is to prevent a homeowner from establishing a private "club" or "camp" for large groups of people to come learn cheer leading or engage in flute playing outside or form an airhorn band? Under the Town's reasoning, so long as their dues are denominated as paying for a t-shirt with the club logo, they are not "paying" to come over en masse an engage in "club" or "camp" activities.

Conclusion

We respectfully ask that the Zoning Board of Appeals reject the Town's determination that AO's Resort will not constitute a commercial use, because it places false reliance on deeply problematic and distinguishable cases and examples, defies common sense, and will forever alter the rural, quiet character of the Town, dismissing and disfavoring all residents and neighbors to favor one powerful corporate enterprise.

Where is the balancing of interests of competing property rights?

The reason residential districts are limited to families is for the quiet and peaceful enjoyment of small groups of individuals in close relation. Allowing a large business to operate an 18 person resort undermines this intent. One could say that existing noise

and nuisance regulations will suffice. But that won't work: the constant drone and chatter and music and commotion of 18 people just below permitted maximums will be a relentless, irritating disturbance. This is wrong. Please make it right.

Respectfully submitted:

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