

TOWN OF HOLLAND PLAN COMMISSION
 OFFICIAL PROCEEDINGS OF THE MONTHLY MEETING
 W3005 County Road G, Cedar Grove, WI 53013
 Monday, January 6, 2025 7:30pm

1. Call to order:
Plan Commission Chair David Huenink called the meeting to order at 7:30pm.
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 December 23, 2024 and December 30, 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, and Jack Stokdyk.
Absentee(s): David Mueller.
Signed-In Attendees: Atty. Ellen Anderson, Atty. David Muth, Deb Essenburg, Walt Ellis, Diane Ellis, John Dickmann, Annemarie Valenti, Sandy Rose, Gretchen Petraske, Bill Rose, Karen Jones, Phil Marr, Justin Obbink, Dana Mueller, Joan Goodman, Cheryl Baldwin, Lee Kaat, Greg Bachrach, Ann Bachrach, Judy Britton, Kristin Sheeran, Susan LaBudde, Esq., Randy Joesse, Joseph Maniaci, Scott Siemon, William Bannier, John Dallman, Barb Dallman, Town Supervisor Stanley Lammers, Town Supervisor Douglas Hamilton, David Valenti, Amy Q Scott, John DuMez, Julie DuMez, Diane Holt, Fred Holt, Dan Madsen, Scott Davis, Nicola Davis, and Jane Hamilton.
Other Attendees: Janelle Kaiser, Town Clerk-Treasurer and Zoning Administrator, and Tom Huenink, Town Building Inspector.
6. Adopt agenda as official order of business:
Motion by Jack Stokdyk, seconded by Roy Teunissen, to adopt the agenda for the January 6, 2025 Plan Commission meeting as presented; the motion carried by unanimous voice vote.
7. Plan Commission procedures and opportunities for improvement:
Motion by Jack Stokdyk, seconded by Roy Teunissen to adopt the amended Town of Holland Plan Commission application form as **modified** during the January 6, 2025 Plan Commission meeting:
 - a. Page 3, Item 4: "...If you would like the Plan Commission Clerk to **assist you with attaching** this information to your application please check..."
 Motion carried by unanimous voice vote.
8. Review/approve minutes of previous meeting(s):
Motion by Roy Teunissen, seconded by Bryan Kaiser, to approve the minutes from the December 2, 2024 Plan Commission meeting as presented during the January 6, 2025 Plan Commission meeting; the motion carried by unanimous voice vote.

9. Information for Plan Commission from Town Board:

- a. Request by Tanner and Sarah Monahan for a minor land division:
Chair Huenink reported that the Holland Town Board accepted the recommendation of the Plan Commission at their December 9, 2024 board meeting and approved Tanner and Sarah Monahan's request for a minor land division at W4037 County Road RR, contingent upon:
 - (1) Receipt of a signed and recordable certified survey map that includes required Town language and matches the plat of survey submitted with the application within 90 days of December 9, 2024.
 - (2) Receipt of a full legal description for the parent parcel or all resultant parcels within 90 days of December 9, 2024.
 - (3) Sheboygan County approval and execution of said certified survey map.
- b. Request by Rhonda Anderson for a minor land division:
Chair Huenink reported that the Holland Town Board accepted the recommendation of the Plan Commission at their December 9, 2024 board meeting and approved Rhonda Anderson's request for a minor land division at W4037 County Road RR, contingent upon Sheboygan County approval and execution of said certified survey map.
- c. Ordinance to Amend Chapter 330 – Zoning:
Chair Huenink reported that the Town Board did not take any action on the proposed ordinance to amend Holland Town Code Chapter 330 – Zoning as drafted and presented at the December 9, 2024 board meeting.

10. Building inspector items:

- a. Review building permits report:
The Plan Commission reviewed the November and December 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:
Clerk Janelle Kaiser received a report of possible building construction without a building permit at N1760 Rauwerdink Road. Building Inspector Tom Huenink will follow up on this report for possible non-compliance with Town building permit requirements.

11. Public input:

- a. Chair Huenink announced that there would be public hearings for the proposed ordinance to amend Holland Town Code Chapter 330 – Zoning and for the clarification of an original request by Brian Bruggink for a rezoning of land used for road right-of-way purposes on DeMaster Road later in the meeting and encouraged the public to submit any comments regarding the those topics during the applicable public hearing.
- b. Lee Kaat was present to address the Plan Commission regarding the exterior lighting on structures at W2730 County Road A South. He inquired about any action taken to address the brightness and direction of the exterior lighting, noting that the issue was reported to the Plan Commission three months ago. He asked the Plan Commission to specify a time frame for resolution of the issue if any action can be taken to enforce Town ordinances and to incentivize the property owner of W2730 County Road A South to comply with Town ordinance requirements.

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: As of the January 6, 2025 meeting, the Plan Commission acknowledged that no changes to the exterior lighting have been observed on the subject property. Chair Huenink reported that the existing exterior lighting structures may or may not be consistent with the conditional use permit's site plan, which shows that 90-degree cut-off wall-pack lighting fixtures are to be installed on Buildings 3, 4, and 5. He also reported that an attorney representing the property owner of W2730 County Road A South emailed a letter to the Town Clerk-Treasurer which pointed to state statutes, created by Wisconsin 2017 Act 67, that require conditional use permit conditions to be "...reasonable and, to the extent practicable, measurable..." The letter asserted that the condition listed in the CUP for the subject property, which disallows the conditional use to adversely affect surrounding properties or create problems relating to light, noise, dust, traffic, storm water, or physical appearance, is unconstitutionally vague; further research about the enforceability of this condition is required. Chair Huenink acknowledged that the Town does not have a lighting ordinance and may consider adoption of one in the future.
13. Town Agreement for a Temporary Permit to Enable Construction of a Second Single-Family Dwelling on a Parcel for Justin and Hollie Obbink at W3188 Hoitink Road: Motion by Brody Stapel, seconded by Roy Teunissen, to recommend that the Holland Town Board approve the Town Agreement for a Temporary Permit to Enable Construction of a Second Single-Family Dwelling on a Parcel for Justin and Hollie Obbink at W3188 Hoitink Road as drafted and presented at the January 6, 2025 Plan Commission meeting; motion carried by unanimous voice vote.
14. Public hearing for Ordinance 2025-Draft(A) to Amend Holland Town Code Chapter 330 – Zoning:
Chair David Huenink called the public hearing for proposed Ordinance 2025-Draft(A) to order at 7:57pm and asked for comments from the public. Chair Huenink announced that comments from the public may be limited to three minutes per person, with a total public comment period limit of sixty minutes.
Several written statements were submitted to Clerk-Treasurer and Zoning Administrator Janelle Kaiser prior to the January 6, 2025, meeting; these statements were provided to the Plan Commission by email or via hard copy at the meeting. Some individuals read written statements at this time; the written statements that were submitted to Janelle Kaiser are attached to these minutes beginning on Page 13.
Let these minutes 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:
- a. Ellen Anderson introduced herself as an attorney representing David Valenti and Larry Britton. Ellen distributed a binder of information to each of the Plan Commission members and to Clerk-Treasurer and Zoning Administrator Janelle Kaiser. Ellen urged the Plan Commission members to table proposed Ordinance 2025-Draft(A). She commented that a previously proposed ordinance, which was reviewed by the Plan Commission and Town Board at their December meetings, favored American Orthodontics (AO) and was not adopted. Ellen said it is clear that the community was against that ordinance, and the Plan Commission and Town Board recognized that there are ongoing issues. Ellen commented that there are other options for amending and clarifying the Town Code that includes

everyone working together. She pointed to the aforementioned binder, which referenced existing ordinances of the Village of Whitefish Bay in Milwaukee County and the Town of Wilson in Sheboygan County that include the definition of family. Ellen said that the Plan Commission recognizes that there might be merit to choosing to table proposed Ordinance 2025-Draft(A) until the AO issue resolves.

- b. Susan LaBudde acknowledged that there are eighteen sections included in proposed Ordinance 2025-Draft(A) and that three minutes is not enough time to be able to comment adequately on those sections. Susan proceeded to read a written statement that is attached to these minutes and urged the Plan Commission to recommend that the Town Board not adopt proposed Ordinance 2025-Draft(A).
- c. John Dickmann said that instead of working on zoning, shut it down. There are other problems to fix first, such as that the Town Clerk does not administer the sale of building permits. John said that the Plan Commission doesn't even know who is in their book; the book should be straightened out first. He inquired about why there isn't a for sale sign in front of N2047 Pine Beach Road South following the December 4, 2024 Board of Appeals meeting, and said that the Town claiming that they don't have anything to do with AO is a bunch of BS. John said that the public hasn't been offered one item of consolation and that the Town hates to listen to them, but they aren't going anywhere and will be here for years if that's what it takes. He commented on the lack of notification to the public about the construction of N2047 Pine Beach Road South, saying notification is the least that could be done and that the house doesn't belong here. If he could vote in the Town of Holland, a lot of the board of directors would not be on the board.
- d. Several members of the public commented that the Town Zoning Administrator should be reviewing the use of property prior to a building permit being issued. That person should have understood the use of N2047 Pine Beach Road South. Janelle Kaiser referenced the Town Zoning Administrator's job description and briefly explained the intended role for the position. Several members of the public also inquired about the existence of any Town process that includes review of the proposed use of property prior to its development.
- e. John Dallman inquired about the last ordinance update, to which Chair Huenink responded that there were several ordinances adopted last year. If there are known ordinance amendments to be proposed, it can be financially advantageous from an administrative perspective to include as many of those amendments within one ordinance as possible, as opposed to adopting several separate ordinances.
- f. Julie Kuether commented that Town officials take an oath to be fair and unbiased toward any particular side and that the Town Zoning Administrator was aware of the proposed construction at N2047 Pine Beach Road South. She inquired about how Town officials have remained unbiased in this matter. Julie also inquired about who reviews the proposed use of a structure prior to a permit being issued. Susan LaBudde read an excerpt from the September 2023 Town Board minutes on behalf of Julie Kuether, which documented contact between the Town Zoning Administrator and American Orthodontics.
- g. David Valenti commented that the Town knew about the proposed use of N2047 Pine Beach Road South before the building permit was issued.
- h. Several members of the public commented that certain sections, or all sections, of the proposed Ordinance 2025-Draft(A) are in favor of American Orthodontics.
- i. Attorney David Muth said that this is an emotional issue for which people have been showing up to meetings for months. Attorney Muth encouraged the Plan Commission to table Ordinance 2025-Draft(A). He referenced the Board of Appeals meeting on December 4, 2024, where the definition of family was discussed, and why the proposed use of the dwelling at N2047 Pine Beach Road South does not comply with the single-family residence district. He acknowledged that guests of AO would not pay any fees, but that a

three to four day stay at a property does not constitute a residence, rather, it's transient activity. The argument that was made during the December 4, 2024 Board of Appeals meeting was that the proposed use acts like a motel or hotel, and the proposed ordinance guts that argument. Attorney Muth referenced Section 13 of Ordinance 2025-Draft(A), stating that there will be litigation and attorney's fees if this particular section is adopted. He also stated that one reason to table a decision about the proposed ordinance is to give the Plan Commission an opportunity to take more time to read written correspondence that he submitted on the day of the meeting, as well as additional aforementioned correspondence submitted by others. He asked the Plan Commission to consider whether the proposed ordinance accomplishes what is appropriate for the R-1 Single Family Residence District, and whether it aligns with what the Board of Appeals wants and what the residents want. The proposed ordinance will cause litigation rather than preventing it. Attorney Muth acknowledged that his firm is working on an ordinance amendment proposal, which he would like to work on with the Town and American Orthodontics, to ultimately be submitted for consideration by the Town. He encouraged the Plan Commission to do nothing with the ordinance at this time and asked them to table proposed Ordinance 2025-Draft(A).

- j. Joseph Maniaci commented that the devil in this situation is not in this room. There was misrepresentation about how the dwelling at N2047 Pine Beach Road South was going to be used. He expressed anger that AO found ways to get around the spirit of the law.
- k. Karen Jones said changing an ordinance to allow a building to conform that does not currently conform to ordinance is not an impartial action. She expressed strong disagreement with what the Town Board is doing and encouraged the Plan Commission to listen to the attorneys.
- l. Scott Davis asked for additional clarification about Sections 11, 12, and 13 of proposed Ordinance 2025-Draft(A); Chair Huenink replied with clarifying information.
- m. Jane Hamilton offered to purchase a microphone system for the multi-purpose room at the Town Hall if the Town cannot find a solution for the room by January 7, 2025 at 12:00pm.

Chair Huenink asked for any additional comments from the public two more times. There were no other comments from the public.

Motion by Brody Stapel, seconded by Roy Teunissen, to close the public hearing for Ordinance 2025-Draft(A) to Amend Holland Town Code Chapter 330 – Zoning at 9:10pm; the motion carried by unanimous voice vote.

15. Recommendation to Town Board: Ordinance 2025-Draft(A) to Amend Holland Town Code Chapter 330 – Zoning:

The Plan Commission reviewed and discussed all sections of Ordinance 2025-Draft(A) to Amend Holland Town Code Chapter 330 – Zoning.

Motion by Jack Stokdyk, seconded by Roy Teunissen, to recommend that the Holland Town Board adopt Ordinance 2025-Draft(A) Amending, Creating, and/or Repealing Provisions of Chapter 330 of the Code of the Town of Holland, Sheboygan County, Wisconsin with the following modifications:

- (1) Strike Section 13.

The motion carried by unanimous roll call vote. Matthew Teunissen: Y; Roy Teunissen: Y; Brody Stapel: Y; David Huenink: Y; Bryan Kaiser: Y; Craig Droppers: Y; Jack Stokdyk: Y. A copy of proposed Ordinance 2025-Draft(A) is attached to these minutes on pages 9 through 12.

16. Public hearing for clarification of an original request by Brian Bruggink for a rezoning of land used for road right-of-way purposes on DeMaster Road at parcel 59006060331:

Chair David Huenink called the public hearing for clarification of an original request by Brian Bruggink for a rezoning of land used for road right-of-way purposes on DeMaster Road at parcel 59006060331 to order at 9:45pm and asked for any comments from the public three times. There were no comments from the public.

Motion by Jack Stokdyk, seconded by Roy Teunissen, to close the public hearing at 9:47pm; the motion carried by unanimous voice vote.

17. Clarification of an original request by Brian Bruggink for a rezoning of land used for road right-of-way purposes on DeMaster Road at parcel 59006060331:

Motion by Jack Stokdyk, seconded by Roy Teunissen to amend their original motion carried on November 7, 2024 *as follows*:

- a. Recommendation 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~~ *0.81-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:

- (1) 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.

- (2) Rezoning:

1. Holland Town Board approval of the minor land division request.

The motion carried by unanimous roll call vote.

18. Discussion of possible future amendments to Holland Town Code Chapter 330 – Zoning including, but not limited to, conditional zoning and options for its implementation:

Chair Huenink reported that he and Janelle Kaiser met with UW Extension- Sheboygan County's Community Development Educator, Barbara Alvarez, to inquire about any resources or assistance with exploring the possibility of implementing conditional zoning in the Town of Holland. The Plan Commission briefly discussed the possibility of incorporating conditional zoning into the Town's zoning ordinance and comprehensive plan. This topic may be discussed at a future Plan Commission meeting.

19. Ongoing issues:

- a. Applications being processed:

The Plan Commission acknowledged progress on the applications being processed.

20. Public input:

- a. A member of the public commented that an amendment to the definition of household within the proposed Ordinance 2025-Draft(A) to Amend Holland Town Code Chapter 330 – Zoning changes the perception of the R-1 Single Family Residence District.
- b. Scott Siemon commented that a negotiated solution that both parties would agree to as a compromise could indemnify the Town from any risk of a lawsuit from either party.

- c. Ann Bachrach stated that she no longer believes that good, ethical people support constituents of the Town of Holland. What Town officials have done has destroyed their life as they currently know it; lately, there have been 8 work vehicles parked on the property at N2047 Pine Beach Road South for construction purposes. The life that they have lived, and the life that their family has lived for 70 years, has been taken away. There are people affected by amendments to Town ordinances. Ann said that it is horrifying to think of how this has changed their life and implored the Plan Commission to think about that within their conscience. The legacy for Ann's family and grandchildren has been destroyed and she wants Town officials to understand that it is on their conscience.
- d. David Valenti asked the why there seems to be a rush to adopt proposed Ordinance 2025-Draft(A). He commented on the optics of certain actions taken by the Town, such as to schedule a special board meeting a few days prior to the regular monthly meeting to take up proposed Ordinance 2025-Draft(A), which includes gutting some of the Board of Appeals powers. David disagrees with Chair Huenink's comments that sections of the proposed ordinance, specifically Section 13 that affects the powers of the Board of Appeals, are in alignment with the intent of the Wisconsin State Statutes. David commented that the optics of changing the Board of Appeals powers the month after a decision was made are horrible. He encouraged everyone to visit AO's website to see how the properties on Foster Road are described as well as their availability for guest stays.
- e. Karen Jones commented that rooms full of people have attended meetings for months to express opinions about something that the people don't want. AO has no commitment to the community and to the beach, and the people can't control it; Karen feels that the Town is leaning towards AO, and that all provisions of the proposed ordinance lean towards AO. Karen cannot believe that Town officials are impartial.
- f. Attorney Muth explained that his urgency for the Plan Commission to table the proposed ordinance is in part attributable to his desire for the parties to work together to address issues within ordinance and come to a resolution.
- g. Brody Stapel said that the Plan Commission is open to ideas for ordinance amendments. If there is a proposal, the Plan Commission is willing to review it. Attorney Muth said he hopes to participate in a mediation with the Town and with AO to work on a proposal for ordinance amendments.
- h. Annemarie Valenti commented that she has heard from one neighbor on Pine Beach Road South and one neighbor on Foster Road South that they have been approached by AO with a request to call them first if they wish to sell their properties. She asked for the Town to limit impact on neighbors of existing properties owned by AO, and also to move away from the type of use conducted by AO at their existing properties.
- i. Attorney Muth asked the Plan Commission to reconsider and not pass Section 1 through Section 6 of proposed Ordinance 2025-Draft(A). Chair Huenink stated that the Plan Commission already voted on that agenda item, however, acknowledged that the Plan Commission made a recommendation to the Town Board. The Town Board will receive a recommendation from the Plan Commission about the adoption of Ordinance 2025-Draft(A) on January 8, 2025 and could choose to adopt the ordinance as recommended by the Plan Commission; they could also choose to: modify the ordinance during their January 8, 2025 meeting prior to adoption or deny adoption of the ordinance.
- j. Chair Huenink provided some information in response to some of the public comments submitted throughout the meeting:
 - (1) Chair Huenink reported that he and Janelle Kaiser have not had any direct contact with American Orthodontics since the December 2024 Board of Appeals decision. Janelle Kaiser reported that a representative of American Orthodontics had contacted her in December 2024 to inquire about the existence of certain

Town records. Let these minutes show that the representative also inquired about Holland Board of Appeals training sessions.

- (2) The Town Building Inspector issues building permits independently. Tom Huenink reviewed the building permit application and building plans for the dwelling at N2047 Pine Beach Road South and issued a building permit, based on his determination that it complied with the applicable building code regulations.
 - (3) The Town Zoning administrator is tasked with serving as an advocate for a property owner or applicant when approached with questions or requests for assistance. The zoning administrator does not issue permits.
 - (4) Chair Huenink stated that ordinance changes often add clarity to the ordinance's wording, rather than changing what is allowed by ordinance. The Town's ordinances must be followed as written, and ordinances are often modified when further clarification of the ordinance or amendments are determined to be needed.
 - (5) Chair Huenink reported that he was aware of a proposal to do mediation, as mentioned by Attorney Muth, between the two parties and was asked to join the mediation discussion about proposed ordinance amendments. Chair Huenink stated that he cannot commit to anything on behalf of the Town as part of the mediation process, but he would be willing to join the mediation discussion.
 - (6) Chair Huenink provided information about conditional use permits, including how general and specific conditions, site conditions, and operational conditions within those types of permits work. This information is in reference to an ordinance that was proposed but not adopted in 2024 which proposed adding hospitality services as a conditional use in the R-1 zoning district. This explanation is not directly related to Ordinance 2025-Draft(A).
- k. Jack Stokdyk wondered whether the Town should consider getting a lighting code. Chair Huenink replied that the Town is considering this; whether a light ordinance is needed may be dependent on enforceability of one of the Town's standard conditional use permit conditions as referenced in item 12. above.

21. Review/approve attendance records for previous meeting:

Motion Bryan Kaiser, seconded by Roy Teunissen, to approve the attendance records as presented; the motion carried by unanimous voice vote.

22. Adjourn:

Motion Jack Stokdyk, seconded by Bryan Kaiser, to adjourn at 10:45pm; the motion carried by unanimous voice vote.

TOWN OF HOLLAND, SHEBOYGAN COUNTY, WISCONSIN
ORDINANCE NO. 2025-DraftA

AN ORDINANCE AMENDING, CREATING AND/OR REPEALING PROVISIONS OF CHAPTER 330
OF THE CODE OF THE TOWN OF HOLLAND, SHEBOYGAN COUNTY, WISCONSIN

BE IT ORDAINED by the Town Board of the Town of Holland, Sheboygan County, Wisconsin, that the following provisions of the Zoning Ordinance for the Town of Holland, Sheboygan County, Wisconsin, (hereinafter the "Zoning Ordinance") are hereby amended, created and/or repealed as follows:

Section 1. That portion of § 330-9 **Definitions** of the Zoning Ordinance defining "DWELLING, MULTIPLE-FAMILY" is hereby amended to read as follows:

DWELLING, MULTIPLE-FAMILY

A dwelling designed for occupancy by three or more families, with the number of families residing there not exceeding the number of dwelling units provided.

Section 2. That portion of § 330-9 **Definitions** of the Zoning Ordinance defining "HOTEL" is hereby amended to read as follows:

HOTEL

A place where sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all related rooms, buildings and areas.

Section 3. That portion of § 330-9 **Definitions** of the Zoning Ordinance defining "HOUSEHOLD" is hereby amended to read as follows:

HOUSEHOLD

One or more individuals 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.

Section 4. That portion of § 330-9 **Definitions** of the Zoning Ordinance defining "MOTEL" is hereby amended to read as follows:

MOTEL

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.

Section 5. That portion of § 330-9 **Definitions** of the Zoning Ordinance defining “RESIDENCE” is hereby created to read as follows:

RESIDENCE

A building or portion thereof designed or used primarily as living quarters for one or more individuals.

Section 6. That portion of § 330-26.4.B. **Definitions** of the Zoning Ordinance defining “BED-AND-BREAKFAST BUSINESS” within the A-T Agricultural Tourism District is hereby amended to read as follows:

BED-AND-BREAKFAST BUSINESS

A building other than a hotel or motel in which accommodations, with or without meals, are offered to transient (maximum stay of 21 days) guests for compensation and in which there are no more than four sleeping rooms providing accommodations for no more than eight adults and four children total, with no cooking facilities in any guest room or common guest space, and in which building the owner, operator, or manager of the business resides.

Section 7. § 330-47.B. of the Zoning Ordinance, relating to conditional uses, is hereby amended to read as follows:

B. After receipt of an application, which includes plans, documents, and written submittals required for the review of the application, and the required data and fees, the Plan Commission shall schedule a public hearing and provide a Class 2 notice thereof under Ch. 985, Wis. Stats.

Section 8. § 330-57.1.C. of the Zoning Ordinance, relating to special exceptions, is hereby amended to read as follows:

C. Notice, public hearing and decision. The Plan Commission shall, after providing a Class 2 notice under Ch. 985, Wis. Stats., hold a public hearing upon each application for special exception, listing the time, place and special exception proposed. Following the hearing the Plan Commission shall consider the proposed special exception and state the grounds for granting or refusing the special exception permit.

Section 9. § 330-57.1.E.(3) of the Zoning Ordinance, relating to permitted special exceptions, is hereby created to read as follows:

(3) The accessory building requirement in § 330-12B(2)(a). Temporarily permitting an accessory building used for nonagricultural purposes on a parcel without a dwelling subject to a written agreement that a dwelling shall be constructed within a specific timeframe.

Section 10. § 330-57.1.E.(4) of the Zoning Ordinance, relating to permitted special exceptions, is hereby created to read as follows:

(4) The one single-family dwelling requirement in agricultural and residential districts. Temporarily permitting a second single-family dwelling on a parcel to allow occupancy of the original dwelling during construction of a new dwelling subject to a written agreement that the original dwelling be razed within a specific timeframe.

Section 11. § 330-96.A.(3) of the Zoning Ordinance, relating to the powers of the Board of Appeals, is hereby repealed.

Section 12. § 330-96.A.(4) of the Zoning Ordinance, relating to the powers of the Board of Appeals, is hereby repealed.

Section 13. § 330-98 of the Zoning Ordinance, relating to the granting of variances by the Board of Appeals, is hereby amended to read as follows:

Hearings.

The Board of Appeals shall fix a reasonable time and place for the hearing, shall provide a Class 2 notice thereof and shall give due notice to the parties in interest, the Building Inspector, the Zoning Administrator and the Town Plan Commission. At the hearing the appellant or applicant may appear in person, by agent, or by attorney.

Section 14. § 330-99.A.(2) of the Zoning Ordinance, relating to the granting of variances by the Board of Appeals, is hereby amended to read as follows:

(2) To vary the applicable limitations on buildings, including height, lot coverage, yard requirements, and construction standards.

Section 15. § 330-106 of the Zoning Ordinance, relating to changes and amendments to zoning district boundaries or amendments to the Zoning Ordinance, is hereby amended to read as follows:

Review and recommendation by Plan Commission.

The Town Plan Commission shall review all proposed changes and amendments and shall recommend to the Town Board that the proposed changes and amendments be adopted as presented, adopted with modifications, or denied.

Section 16. § 330-107.A of the Zoning Ordinance, relating to changes and amendments to zoning district boundaries or amendments to the Zoning Ordinance, is hereby amended to read as follows:

A. The Town Board shall, after providing a Class 2 notice under Ch. 985, Wis. Stats., hold a public hearing regarding the proposed changes or amendments. The Town Board shall also give at least 10 days' prior written notice to the Clerk of any municipality having extraterritorial jurisdiction of any land to be affected by the proposed changes or amendments.

Section 17. § 330-108 of the Zoning Ordinance, relating to changes and amendments to zoning district boundaries or amendments to the Zoning Ordinance, is hereby amended to read as follows:

Board action.

Following a public hearing and after consideration of any Town Plan Commission recommendations, the Town Board shall consider the proposed changes or amendments and take such action with respect to the changes or amendments as the Town Board may determine, including, but not limited to, adopting them as presented, adopting them with modifications, or denying them.

Section 18. This Ordinance shall become effective upon passage and posting.

Adopted this ____ day of _____, 2025.

TOWN OF HOLLAND

David Huenink, Town Chair

Kelly Caswell, Town Supervisor

Doug Hamilton, Town Supervisor

Stanley Lammers, Town Supervisor

Brody Stapel, Town Supervisor

ATTEST:

Janelle Kaiser, Town Clerk

Public Comment Submitted:

To the Town of Holland Board and Plan Commission

From Anne Courtney, Home Owner

N2237 Foster Road South

Oostburg

Please stand on the side of the home owners of the Town of Holland and the Board of Appeals by keeping Residential Zoning for Residences. There is no need to change the wording to include "Hospitality Services" in Residential Zoning.

The Hospitality we need on the shore of Lake Michigan should be offered by actual residential home owners and not transient businessmen.

Don't ruin our future and our property values by changing the wording and making this charming village into a transient tourist stop. Please continue to preserve the charm and character of our beloved community by supporting Residential Zoning.

Public Comment Submitted:

I am a resident of Holland and live at W1194 Stokdyk Ingelse Road. I cannot attend the meeting on Monday, but I do have strong feelings on the AO "hospitality" zoning issue and I would like my opinion below to be added to the record of official Holland resident comments.

I have attended one meeting on the proposed "hospitality" zoning change and have studied the issues raised by my neighbors and the Town Board. I believe the issue is actually quite complex when one considers the inherent rights and protections implied by owning a home in a "R1" residential zoning area ... but also the rights of others to own homes that are operated as Airbnb's, rentals, etc. The newly built structure that is being described as "hospitality" in nature is most likely a unique hybrid of residential/ commercial I rental type of property. As such, I think much more study needs to be made to ensure that the legal rights of ALL parties are appropriately addressed. To date, I am not convinced the Board has done nearly enough research to make any legally sound conclusions, let alone sufficient community input to approve a zoning change. Making what I consider to be **HIGHLY PREMATURE** zoning decisions now is not in the best interests of anyone and will likely result in litigation costs that will ultimately be borne by me the taxpayer, not the Board.

Accordingly, I request that the Plan Commission and the Town Board DEFER any zoning changes related to this issue until sufficient legal research, community discussion, and consensus building with ALL stakeholders can be done.

thanks

kurt Nilsen

Public Comment Submitted:

Greetings, Happy New Year, I hope you and family are well, and I write in regards to the Town of Holland meetings today and Wednesday, which as I understand will address the topic of residential zoning and related matters. Unfortunately, I will not be able to make the meetings as I am currently overseas, although I understand that residents can send input per this email vehicle {if you could confirm

receipt and as input accordingly).

It is requested that any considered study of- or relevant communications behind - the associated justification (economic, legal, how it fits within the Town's plans and history, with comparative analysis with other Wisconsin towns that took such a route, costs and benefits, provisional recommendations, etc.) to such important changes to the zoning code be published and for stakeholder input with time for proper discernment.

It seems that documented analysis with justification for such changes that potentially will have profound direct effects (not to mention unknown secondary and tertiary) on the Town and current residents, is warranted. If there has been no such study with a process of public and stakeholder input, I would then suggest one be commissioned by the Town of Holland. It appears that there is currently no broad consensus behind such changes, and launching such a process of considered study with resident input will be prudent and of assistance to all parties involved.

Thanks very much for your consideration and support of the Town of Holland. Best Regards,
Charles

{Charles W. Parker, III, N1721 Te Ronde Beach Road, Oostburg, WI}

Public Comment Submitted:

Hello! I am unable to attend the meeting tonight and was advised to forward my questions/comments to you. Thank you for managing this for tonight's meeting and sorry for the late submission. I hope you had a nice and restful Christmas and New Year!

Sincerely,

Deb Krygiel

N2035 Pine Beach Road South

Questions/Concerns to be shared with the Town of Holland Plan Commission and/or Board:

1. In the proposed changes to the ordinances relating to hotels, motels, and bed-and-breakfasts [see below], what is the purpose for the lack of continuity in the language being used in regards to payment and/or compensation?

Section 2. That portion of § 330-9 Definitions of the Zoning Ordinance defining "HOTEL" is hereby amended to read as follows:

HOTEL

A place where sleeping accommodations are **offered for pay** to transients, in 5 or more rooms, and all related rooms, buildings and areas.

MOTEL

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.

BED-AND-BREAKFAST BUSINESS

A building other than a hotel or motel in which accommodations, with or without meals, are offered to transient (maximum stay of 21 days) guests for **compensation** and in which there are no more than four sleeping rooms providing accommodations for no more than eight adults and four children total, with no cooking facilities in any guest room or common guest space, and in which building the owner, operator, or manager of the business resides.

2. What are the expected outcomes of any of the proposed amendments, specifically in regards to the usage of the properties owned by American Orthodontics or other corporate entities?

3. Many of the ordinances that are being considered for amendments deal with some facet of the tourism industry. What is the Town of Holland's long range plan in regards to tourism?

4. What is the Town of Holland's plan to protect existing neighborhoods and residential areas from overuse and/or exploitation, beyond their originally intended uses [Ex: R 1], especially along the shoreline of Lake Michigan.

5. What is the Town of Holland's plan to build open and transparent communication with residents, specifically residents that are or may be impacted by controversial or unconventional changes, allowances, and/or amendments?

Thank you. I look forward to your answers and appreciate your time.

Public Comment Submitted:

Comments for BOTH 1/6/25 Plan Commission and 1/8/25 Board meeting-S. LaBudde, Esq.

COMMENTS FOR PLAN COMMISSION MEETING ON 1/6/2025 & SPECIAL TOWN BOARD MEETING ON 1/8/2025-Submitted by Susan LaBudde, Esq.

Please go SLOW AND DELIBERATE.

1. Please SLOW DOWN. What is the rush to enact wholesale changes that have had no public discussion or airing, but were first posted publicly days ago.
2. What RESIDENT specifically asked for these changes? Did AO dictate? WHERE IS THIS COMING FROM? WHO wrote this language.
3. WHAT IS THE URGENCY? Is ToH trying to help AO avoid having to appeal the BOZA decision of 12/4/24 (which was supported by the vast majority of residents)? Why isn't the TOH representing its residents rather than AO?

WHY IS THE TOH BOARD RETALIATING AGAINST THE BOARD OF ZONING APPEALS?

1. WHY IS THE TOH SEEKING TO GUT CORE FUNCTIONS of BOZA?

2. This gives EVERY APPEARANCE of the TOH Board trying to reverse or do an end-run around BOZA's determination December 4th that the Town's use opinion was wrong, illegal. The scope and timing of these sudden proposed revisions further erode trust and transparency.
3. Tread carefully as this seems to cross the line of bad faith in a way that may strip the board and its members of immunity.

--Unlike "judicial determinations", which require at Least the appearance or pretense of impartiality, a town board member can be biased (and malicious) as the day is long as to "Legislative" acts (motive is irrelevant)--like wholesale amendments to municipal codes.

--However, the context and timing of this suggest the TOH is essentially engaging in a non-protected/ non-immune adjudicative act by illegally reversing the BOZA decision of 12/4/24. A court could easily construe recent events in toto as bad faith adjudicative overreach-exposing the board and its member to personal liability. --Again: What's the hurry. At a minimum the TOH should get a considered Legal opinion as to the legality of gutting BOZA of its core functions.

AS TO THE FEAR OF LAWSUIT BY OA, WHAT'S THE ACTUAL RISK, SINCE WHAT ARE THEIR REAL, PROVABLE OBJECTIVE QUANTIFIABLE DAMAGES?

1. AOA claims it has no profit motive nor rental intentions with respect to the PB property. There is no lost income argument. No damages exposure there.
2. Other than outlay for potential legal fees, is there some big damages award TOH is afraid of? If so, what are they, objectively considered stripped of the bugaboo of fear? AO can use the property consistent with R-1 single family usage.
3. Compare the potential damages claims by an entire neighborhood of PB Road residents and beyond: for precipitous decline in property values, nuisance claims, road accidents and the like.
4. And by the way, siding with AO doesn't guarantee no lawsuit against the town. (See below).

WHY DOES TOH CONTINUE TO ACT AS IF IT IS IN DIRECT COLLUSION WITH AO?

Public Comment Submitted:

Comments for BOTH 1/6/25 Plan Commission and 1/8/25 Board meeting-S. LaBudde, Esq.

I recently read about how the City of Sheboygan has been in cahoots with Kohler Company in terms of the recent annexation battles with the Town of Wilson. And even though Kohler's golf course conditional use permit {CUP) was set to expire, the Sheboygan PC extended it, with apparently minimal public input. That decision has already resulted in 2 citizen driven lawsuits against the City of Sheboygan and significant citizen outrage. Siding with Big Corporate does not mean no litigation exposure/ cost.

The DNR recently denied Kohler a wetlands permit, but Kohler is going ahead with constructing a golf course next to Kohler Andrea State Park anyway. Legal commentators have noted that the City of Sheboygan acted without "transparency and accountability" . It's letting a deep pocket corporation come in and fundamentally and permanently change the landscape, character and use of land in a way that is detrimental to neighbors (and the environment) and contrary to the wishes of a vast majority of residents. Please TAKE THE HIGH ROAD. DON'T BE PRESSURED BY MISGUIDED FEAR OF AO.

PLEASE STOP A HEADLONG RUSH INTO FURTHER CHAOS AND RANCOR. THE TOH SHOULD NOT RAM THROUGH A MAJOR SET OF CHANGES FOR WHICH IT HAS OFFERED NO JUSTIFICATION OR EXPLANATION-OTHER THAN BENDING OVER BACKWARDS TO DO AO'S BIDDING WHILE IGNORING EVERY OTHER VOTE AND VOICE.

NO MATTER WHAT, THE TOH NEEDS A NEW LAWYER.

1. Eberhart has an incurable conflict of interest. He wrote the legal opinion that BOZA overturned. His primary goal will be to save face.
2. A continuing conflict of interest may mean even more legal exposure for the TOH.
3. Just as he repeatedly pressed--without foundation-- pressed a BOZA member 3 times to recuse himself, Atty Eberhart must step down now.

Public Comment Submitted: Susan LaBudde, Esq. N1677 Alexander Lane

1. AO lost before the zoning board on 12//4/24.
 2. In the NORMAL course of events, losing parties have 30 days to appeal to circuit court, where Plaintiffs have the burden of proof.
 3. AO's resort to circuit court would be expensive and UNCERTAIN. (w/o getting into legal technicalities, its prospects of winning are actually very low. given the deference the circuit court would give to BOZA. The clock is running out on AO's window to appeal.
 4. Now, however, the toH is rushing to give AO essentially a GET OUT OF JAIL FREE CARD. If these zoning changes are passed, the 12/4/24 Zoning decision Is rendered a nullity, it's cancelled out.
 5. What the TOH is doing, completely circumventing the legal process and handing a spot zoning result to AO is both unprecedented and unethical. It's also a slap in the fact to the vast majority of residents, YOUR CONSTITUENTS, who oppose this. It's a gross over-reach & abuse of power.
 6. Again, WHAT IS THE RUSH? (Ive already noted in my memo to Janelle to distribute both the legal risk to the TOH in pursuing the course it is & I urge you to lead it).
 7. The changes gutting the BOZA of some of its core functions is pure retaliation and over reach.
 8. The changes proposed essentially render R-1 zoning MEANINGLESS. We could have fraternities, clubhouses, archery clubs, all sorts of uses & density of occupation wholly incompatible with R-1 Zoning.
- What town official is driving this initiative?
 - What has AO promised as payback to the TOH
 - What current residents proposed these changes?
 - Who drafted them?
 - Did AO give input tthis draft or instigate what the town is doing
 - why no discussion whatsoever; the town hasn't even explained the rationale behind each and every proposed changes?

Public Comment Submitted: Sandy Rose N1667 Alexander Lane

I would like to speak on the topic of the proposed revision of Town code. Were there meetings held with Plan commission to discuss the details of what is being proposed here so that Plan Commission Members thoroughly understand the details of the changes being recommended as well as the intent in terms of what these changes will be used for, to what purpose will they be put? I contend that this revision has a primary purpose the goal of serving the interests of a specific party, namely American Orthodontics and further that it represents a proposal that is harmful to the R1 residents of the Town of Holland and that it ignores the reasonable concerns of Town residents that have been strongly voiced to Town officials over the last few months.

Let me break it down for you:

There are the major changes compromising the main intent and there are a few items thrown in that is I assume a weak attempt to try to claim later the changes represented a broad set of changes to code and not what it truly is for anyone who has eyes and that is a manipulation of code to serve the interests of of AO specifically.

So here are the major items of the manipulation:

1. Revision of the definition of a Hotel. The change here is to add "offered for pay". This change is designed to remove the uncomfortable truth that it can be reasonably argued that AO's planned property use for Pine Beach Road more closely matches the use definition currently laid out for Hotel which makes no reference of charging fees than it does for a Single Family Dwelling.
2. Revision of the definition of Motel. Same as Hotel, adds references to room charge and cost as those are not present and Pine Beach Road property use more closely matches Motel under current definitions than it does Single Family Dwelling.
3. Revision to the Definition of Household. Removes the reference of the word family and replaces it with 1 or more individuals. This in turn is tied to the family definition which references a household in a circular fashion. Clearly this is an attempt to move the Town of Holland from an expectation that single family homes are occupied by a single family with a very loose 1 or more individuals requirement which in the end is no requirement at all because any group of people meets a 1 or more definition.

Is there a valid argument to be made that revising the definition of family and/or household to convey that intent is to provide greater flexibility as to what was meant by family and to be allowed as valid cohabitation arrangements could be in the interests of the residents? Certainly, but one must look to the actual solution that is proposed to answer the question who is it intended to serve based upon whose interests are actually being served. So, for example, the City of Sheboygan attempts to convey an intent of flexibility in cohabitation but they do so in a responsible manner intended to also make sure large unlimited group cohabitation by unrelated individuals is not part of what they intend as it does not serve the interests of the broad residents within the community: "Family: An individual or two (2) or more persons, each related by blood, marriage or adoption, living together as a single housekeeping unit; or a group of not more than four (4) persons not so related, maintaining a common household." But, what is being proposed here tonight is an unlimited 1 or more persons determination of a qualifying family or household for occupancy of a single family dwelling. This solution is irresponsible in terms of maintaining compatibility of use in an R1 district, does not serve the interests of R1 residents as evidenced by their opposition to this change. Why is something

Public Comment Submitted: Sandy Rose N1667 Alexander Lane

responsible not being proposed, because it would not serve the interests of AO, to serve the interests of AO, it is necessary to create rules so loose that you could argue that this change represents a defacto rezoning of R1 into something it was not intended to be.

4. Adding the definition of residence and including wording that use is available to the loose standard of 1 or more individuals. Again, one more code change aligned to bolster a claim that the body of Town of Holland zoning code supports the concept that Pine Beach Road property used fits permitted use as it is a building where 1 or people can reside.

5. Repeal of Board of Appeals authority to grant more restrictive substitutions for nonconforming use. Is this designed to serve AO should Pine Beach Road end up as a nonconforming use when the dust settles? Make sure they don't have future authority that could impact AO properties?

6. Repeal Board of Appeals authority to hear and decide appeals brought related to zoning interpretations. Seeing no movement of this authority to another body in the proposal, I assume the goal is to eliminate not only the Board of Appeals authority to handle such appeals but also an outright elimination of a formal appeal process for the public on these decisions. In the context of recent events this certainly seems designed to serve AO yet again as this authority is what overturned the Town Board's interpretation of Pine Beach Road planned property use as permitted under existing Town code as it is retaliatory punishment against the Appeals Board for daring to question a Board decision in favor of AO and strives to make sure that Appeals Board can not get in the way again as Board proceeds down a path to specifically serve the interests of AO

7. Alteration of Plan Commission procedures to remove the requirement that proposed changes and recommendations communicated to the board do not need to be in writing. Why eliminate responsible record keeping and transparency to the public. Want freedom to do back room deals and facilitate ramrodded approaches to conducting business? Maybe they felt they needed it ramrod changes to serve AO.

8. Alteration of language related to Town Boards responsibility to remove the requirement that the Board communicate place and time where meetings are held to discuss zoning district boundary ordinance changes. What possible purpose does this change have? How can members of the public attend and exercise a right to make comment if time and place is not communicated? This seems to be setting up an end around that could be used to assure Town residents have no opportunity to exercise concerns in a face to face manner.

Now to the remaining changes:

1. Revision of definition of Multi Family dwelling - appears to be a cosmetic change in wording that replaces in residence with residing. Seems like an alteration that has the same meaning to me but perhaps Attorney Eberhardt has one of his convoluted arguments for why AO's planned property use does not involve multifamily occupancy of the Pine Beach Road property.

2. Revision of definition of Bed and Breakfast Business for Agricultural Tourism Districts which removes the word "residence" in favor of building owner resides. Not sure why this is being made, on the surface it seems like another nothing change.

3. Revision of Variance authority language. This does make minor changes to this authority which can not be stripped by law.

These remaining changes seem to be a weak attempt at a smokescreen to try to convince someone that this revision was solely about AO's Pine Beach Property and manipulating code to serve AO interests.

Public Comment Submitted: Scott Siemon N1695 Alexander Lane

Are you aware that Town Board Attorney Eric Eberhardt, and Town Board Attorney associate Matt Nugent, went into a private huddle with AO attorney's Daniel Blinka and Lynn Ludke right after the Appeals Board meeting which overturned the Town's interpretation that AO's Pine Beach Road property use should be a permitted use under current code? They did this right in front of Town residents gathered to voice their opposition to the original Town decision. Seems clear who they are collaborating with as they craft their moves, it certainly is not the residents that they ignore.

Are you also aware that resident attorneys reached out to the Town and AO with an invitation to resolve this dispute via a negotiated solution after the Town Appeals Board overturned the Town Board's interpretation? And that AO refused that offer? Why did they refuse? Could it be that they felt they could just sit back and let their their collaborators within Town government ramrod through tonight's proposed revision giving them everything they wanted and perhaps more?

Can there be any doubt that the proposal you are being asked to recommend to the Town Board here tonight is anything other than a code manipulation to specifically serve A O's rights and ignore resident opposition and rights in the process? And can there be any doubt that a large scale motel like hospitality lodge structure and associated property use is incompatible with the intent of having an R1 zoned district? And zoning changes designed to make that unconditioned permitted use is bad policy?

I do not know why Town Leadership has decided to do the bidding of a large corporation and become so obsessed with doing AO 's bidding that they are willing to:

- 1) Ignore strong Town of Holland resident opposition
- 2) Manipulate Town zoning code to serve the interests of AO specifically over the interests of Town
- 3) Throw out a welcome mat for future incompatible use by solving the Pine Beach Road issue using an approach that codifies a clearly incompatible property use as permitted without conditions
- 4) Eliminate a long standing resident appeal right process by stripping the Town Appeals Board of the authority to review appeals of Town zoning law interpretations

Since they are not sharing why they are doing this, I must speculate as to Town Leadership's motive. Maybe they secretly want to encourage a corporate takeover of the lakefront and in essence are doing a back door rezoning of the area. Viewed in this light, tonight's revision is both an ugly precedent and an immoral act breaking the covenants made to residents that zoning districts represent. The second possible motivation and the one I hope is the more likely scenario is that they simply making a bad misguided decision because they are so fearful of AO either due to direct threat by AO or worrying about the risk to the point that they have been pushed to irrational thinking. The concerned R1 residents wish to avoid the risk posed by AO, we are residents in the Town as well. The residents are willing to do what good neighbors do, sit down to discuss things and work out the dispute via negotiation, it is AO who has refused to be a good neighbor here by refusing the invitation. Residents shouldn't have to be here requesting that the Town Officials make a good faith to best serve the interests of Town residents by resolving the Pine Beach Road property dispute in a manner that balances the stark reality of Pine Beach Road reaching full construction with the reality that this property use is not compatible with an R1 Zoned district and it's use has significant potential to create adverse impacts on the quality of life of resident neighbors to this property. Given those realities, an appropriate solution in my opinion, should;

Public Comment Submitted: Scott Siemon N1695 Alexander Lane

1) Grant AO rights to use the property at South Pine Beach Road but subject to some reasonable conditions that will try to limit the potential for negative impacts on the property's resident neighbors

2) Strives to strengthen Town zoning language and Town permit procedures such that a repeat of this mess does not happen again. The Town should not solve the Pine Beach Road dispute by laying out a welcome mat for future incompatible property use to proliferate within R1 districts.

Town Leadership has certainly been consistent, two proposed solutions sharing a common theme: full accommodation of AO interests and not a shred of effort expended to create either enumerated property use conditions for Pine Beach Road to protect resident interests nor an effort to try to ensure a future repeat of incompatible use being allowed to get to this stage.

I suspect you may be getting lobbied to blindly follow Town Leadership's lead based upon an argument that anything short of an immediate and full accommodation of A O's interests will be disastrous for the Town and thus immediate and drastic measures are called for and maybe an argument that their plan is the only way out of this mess.

I don't buy what they are selling and I don't think you should either. If AO is granted use to the Pine Beach Road property subject to some reasonable conditions why would they be motivated to take legal action? And if they did take legal action under such circumstances, seems like it would be hard to show significant damages are warranted simply because their guests may be expected to use the property in a manner consistent with a single family residential area.

The Town and residents should be working together. The Town should add it's voice to the call for negotiations. If AO continues to refuse to negotiate then work with residents to consider taking action but one that protects the rights of the residents and weakens the threat posed by what AO might do to a negligible risk. Going scorched earth on your own residents is a poor way to serve them.

I encourage you to consider multiple recommendations for the Board tonight.

1) First recommend rejection of the zoning language proposal that Town leadership is peddling. It is clear manipulation of Town zoning rules designed to specifically serve the interests of AO while dearly harms the interests of Town residents.

2) Suggest making a recommendation that any Town Board action designed to grant property use rights to AO for Pine Beach road include enumerated conditions to protect residents and a process where Town works with Town residents to develop a solution. Town residents deserve an opportunity to have input on what represents reasonable conditions on property use for Pine Beach Road.

3) Suggest making a recommendation that any further action by Town leadership or by the Town Board with respect to zoning language should be to pursue changes designed to make a repeat of the Pine Beach Road situation unlikely to reoccur and certainly should represent a back door rezoning into some Frankenstein of a district type.

The Town should stop treating the Town residents as enemies who they attempt to legally outmaneuver and instead work with the residents to get the resolution of this dispute headed down a path more likely to have a favorable outcome. Your Town leadership and attorney are proposing the wrong path to the resolution of this conflict, I urge you to step forward to encourage them to get on a positive path.



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January 6, 2025

Ms. Janelle Kaiser
Plan Commission Clerk
Town of Holland
clerk-treasurer@townofholland.com

Dear Ms. Kaiser:

I write on behalf of David Valenti and Larry Britton to oppose the proposed amendment pending before the Town Plan Commission on Monday, January 6, 2025. We ask that you provide all members of the Plan Commission with a copy of this correspondence in advance of the meeting and make as part of the record.

The Plan Commission should table the proposed amendments to the Town Board to consider the impact these amendments would have on the Board of Zoning Appeals, the Town Plan Commission, and to consider if the amendments are even legal (and thus result in additional, unnecessary litigation). For the reasons that follow, we ask the Plan Commission to table any recommendations to permit for a fully informed decision and debate as to the impact these amendments would truly have.

I. Legal arguments.

The proposed amendment violates Wisconsin law in two ways. First, it represents illegal spot zoning. Spot zoning cannot stand when "a single lot or area" receives special privileges that are inconsistent with its zone for the property owner's personal benefit instead of for the public good. *Cushman v. City of Racine*, 39 Wis. 2d 303, 159 N.W.2d 67, 69 (1968).

The proposed amendment engages in spot zoning: it seeks to validate the AO House's use in an R-1 zone, even though the Board of Zoning Appeals has already decided that the AO House's proposed use does *not* meet R-1 zoning requirements. The proposed changes *only* target the AO House and *only* affect that property for American Orthodontics' benefit (and not the public good). The proposed amendment exemplifies illegal spot zoning and it should not be recommended.

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Second, the proposed amendment illegally strips the Board of Zoning Appeals of its powers contrary to state law. Wisconsin Statute § 62.23(7)(e)(7)(b) requires that a Board of Zoning Appeals “hear and decide appeals where it is alleged there is error in any . . . determination made by an administrative official in the enforcement of this section[.]” Wisconsin courts consider the Board of Zoning Appeals’ power to interpret zoning ordinances a “minimum requirement” of a zoning board. *See, e.g., EZMONEY Wisconsin, Inc. v. City of Wauwatosa Bd. of Zoning Appeals*, No. 2008-AP-2154, 2009 WL 2431985 (Aug. 11, 2009) (the court decided not to “so drastically limit the power of the Board [of Zoning Appeals]” because Wis. Stat. § 62.23(7) describes interpretation power as “the ‘minimum requirements’”); *Roberts v. Manitowoc County Bd. of Adjustment*, 2006 WI App 169, ¶ 16, 295 Wis. 2d 522, 532, 721 N.W.2d 499, 504 (finding that a Board of Zoning Appeals earns “a degree of deference” to interpret zoning ordinances).

The proposed amendment would repeal the Board of Zoning Appeals’ power to hear interpretations of a zoning ordinance: **Section 8** would strike that power from the Town Code. Such a change ignores what is required by state law. For that reason alone, the amendment to amend the Board of Zoning Appeal’s authority is inappropriate.

II. Common sense.

Beyond legal arguments, however, the proposed amendment simply defies common sense. The last amendment proposed before the Plan Commission was intended to benefit the proposed use of a certain property owned by American Orthodontists on Pine Beach Road South. This Commission recommended not to pass that amendment. The current proposed amendment does the same thing. Why should the current proposal pass when all the same reasons why the Plan Commission decided against the prior proposal still apply?

This body wisely decided not to adopt a prior amendment that favored AO because it was not within the Town’s interests, and because the AO House dispute remained ongoing. The Board of Zoning Appeals recently decided that the AO House’s proposed use in fact fails to comply with R-1 zoning. In other words, the dispute continues. But this current ordinance yet again seeks to change the landscape of zoning practices to favor AO, even though the same reasons why this Commission chose not to do so previously still persist.

The Plan Commission should wait on amending the Town’s ordinances until the underlying dispute with American Orthodontics is resolved. This Plan Commission has tabled important issues in the past, and this is such a drastic change that additional time and consideration is urged. It makes no sense why the Town proposes amending the Town Code *again* while public sentiment still has not changed and while the dispute still remains ongoing.

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Changing the ordinance and stripping the Board of Zoning Appeal's authority shows clear intent by the Town Commission to try and ram through a result not supported by the residents, the existing ordinance, and the decision of the Board of Zoning Appeals. This Town Planning Commission should pause and consider the merits of any amendment, including reviewing how other municipalities have drafted their residential code to address "family" and "residence" for purposes of Zoning. There is absolutely no need to rush through amendments proposed for a single purpose that may have long term consequences for the Town. That would be a mistake. Tabling the issue for additional review, research, discourse and consideration is the far more appropriate path.

But the Town Commission is going even further in its proposed amendments; it wants to strip the Plan Commission of the ability to even table issues for additional consideration going forward. **Section 10** of the Proposed Amendment seeks to amend the Town Code so that the Plan Commission "shall recommend to the Town Board that the proposed changes and amendments be [1] adopted as presented, [2] adopted with modifications, or [3] denied." This change would not allow the Plan Commission to "table" any future change at issue: the Commission would simply have to act on any proposal that comes before it.

That would be the case even if a recommendation about changing the Town Code would benefit from additional information, further input from Town officials, or even a good night's sleep. That is an ill-advised amendment, and careful consideration should be given to any such amendment. The rule of unintended consequences certainly applies to such a wide sweeping amendment, stripping you of any ability to actually think and consider issues before acting. You should NOT strip the Plan Commission of any powers without giving due consideration to whether that is actually an appropriate amendment.

This common-sense precept rings especially true here: even if the Town believes in clarifying the Code, taking some extra time to compare provisions from other towns could create a different, more positive outcome. For example, the Village of Whitefish Bay clarifies a "family" as a group that "shares an entire dwelling[,]" "lives and cooks together as a single household unit[,]" "shares expenses for food, rent, utilities, or other household expenses[,]" and "is permanent and stable and not transient or temporary in nature." The Town of Wilson similarly refers to a family as a group of people "related by blood, adoption, or marriage[.]" Adopting a clear definition of family in the Town of Holland similar to those set forth in Whitefish Bay or Wilson could clarify gaps in the ordinance without needlessly favoring American Orthodontics the way that the proposed amendments have. Should the current proposed amendment pass, however, additional research or time to consider alternatives (like those in Wilson or Whitefish Bay) would not be permitted. This is certainly not the best practice.

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The purpose of this new, proposed amendment is to rush the Plan Commission into quick decisions; it would prevent this body from deliberating alternatives for any decisions in the future. This departure from the Plan Commission's prior practice defies common sense and should not be recommended. It literally would prevent the Plan Commission from doing its job and instead render the Plan Commission a rubber stamp to the Town Board's interests.

It is up to you to deliberate, decide, and ultimately protect the Town from making rash changes to the Town Code. I urge you to recognize the serious impact these amendments would have on you, the Town, and the ability to engage in careful consideration of the issues before acting. Given the importance of these amendments, I urge you to table them to allow you additional time to make a fully informed decision as to what is best.

Thank you for your consideration.

Very truly yours,

/s/ David P. Muth

David P. Muth

DPM:eea

cc: Attorney Eric Eberhardt (via email)