

Eau Claire County
PLANNING & DEVELOPMENT COMMITTEE AGENDA

Tuesday, July 12, 2016 • 7:00 PM
Eau Claire County Courthouse • 721 Oxford Avenue • Room 1277
Eau Claire, Wisconsin

1. Call to Order
2. Public Input Session (**30 minute maximum**)
Comments are restricted to matters within the Committee's jurisdiction, and items not pertaining to already scheduled public hearings. Comments will be limited to three minutes per individual.
3. **From May 24, 2016: Proposed Resolution "Ordering Attachment to the Lake Altoona District" / Discussion – Action** **p. 2 - 89**
 - Michael K. and Christine L. Allen, Lots 3 & 4, Block 2, Lake View Addition – Tax Parcel 024-2006-05-000. Site Address: 7734 Elayne Drive, Eau Claire
 - Melanie A. Hagen, Lot 8, Block 2, Lake View Addition – 024-2006-10-000. Site Address: 7816 Elayne Drive, Eau Claire
4. A variance request for depth to width ratio exceeding 4:1 in Section 06, T27N-R06W, Town of Ludington (Jaenke) / Discussion – Action **p. 90 - 92**
5. A variance request to create a flag lot, Section 01, T26N-R07W, Town of Lincoln (Hawkinson) / Discussion – Action **p. 93 - 99**
6. 2017 Planning & Development Budget Items / Discussion – Possible Action **p. 100 - 113**
7. Review of June Bills / Discussion **p. 114**
8. Review/Approval of June 28, 2016 Meeting Minutes / Discussion – Action **p. 115 - 118**
9. Proposed Future Agenda Items / Discussion
10. Adjourn

Post: 7/7/2016

Please note: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language, interpreters or other auxiliary aids. For additional information or to request the service, contact the County ADA Coordinator at 839-4710 (FAX) 839-1669 or (TDD) 839-4735 or by writing to the ADA Coordinator, Human Resources Department, Eau Claire County Courthouse, 721 Oxford Ave., Eau Claire, Wisconsin 54703.

ORDER ATTACHING TERRITORY TO THE LAKE ALTOONA DISTRICT:

LAKE ALTOONA DISTRICT, EAU CLAIRE COUNTY, WISCONSIN

WHEREAS, a petition was filed with the Eau Claire County Clerk on May 4, 2016 requesting attachment of territory to the Lake Altoona District; and

WHEREAS, pursuant to Wis. Stat. §33.26(2), a Class 1 public hearing was held at the Eau Claire County Courthouse, Eau Claire, Wisconsin on May 24, 2016 at 7:00 p.m. at which time the public was invited to attend and be heard; and

WHEREAS, the Eau Claire County Committee on Planning and Development, after considering the petition and all the testimony offered at the May 24, 2016 public hearing and additional written testimony received, recommends approval of the petition to the Eau Claire County Board of Supervisors at its July 12, 2016 Committee on Planning and Development meeting.

NOW THEREFORE BE IT RESOLVED THAT THE EAU CLAIRE COUNTY BOARD HEREBY FINDS AND ORDERS AS FOLLOWS:

FINDINGS

1. The petition has been brought forth properly in accord with Wis. Stat. §33.33(2).
2. The appropriate notice of public hearing was published or mailed.
3. The appropriate committee was appointed and reported to the Eau Claire County Board within three (3) months after the date of the public hearing.
4. The public hearing was held not later than 30 days from the date of presentation of the petition to the Eau Claire County Clerk.
5. This order is issued within six (6) months after the date of the public hearing.
6. Reaffirms that the Lake Altoona District is necessary.
7. The public health, comfort, convenience, necessity or public welfare has been and will continue to be promoted by the establishment of the district.
8. The real property included in attachment is benefited by the district.

ORDER

1. A public inland lake district is established for the area hereinafter described, which encompasses within its boundaries all of the frontage of Lake Eau Claire, a public inland lake located in the Towns of Bridge Creek and Ludington, Eau Claire County, Wisconsin.
2. The corporate name of the public inland lake district shall remain as the Lake Altoona District.
3. The territory included within this attachment to the Lake Altoona District is as follows:

Parcel 1: Lots 3 & 4, Block 2, Lake View Addition
Further described as: Tax Parcel 024-2006-05-000

Parcel 2: Lot 8, Block 2, Lake View Addition
Further described as: Tax Parcel 024-2006-10-000

All of the above described lands are located in part of the Town of Washington, Eau Claire County, Wisconsin.

Dated this ____ day of _____, 2016.

4 - ORDERING ATTACHMENT TO THE LAKE ALTOONA DISTRICT -

5
6
7 WHEREAS, a petition to attach two properties to the Lake Altoona District was submitted to
8 the Eau Claire County Clerk on May 4, 2016 pursuant to Wis. Stat. 33.33(2) by the Lake Altoona
9 Board of Commissioners and forwarded to the Eau Claire County Committee on Planning and
10 Development for review and public hearing, and;

11
12 WHEREAS, written notice of a public hearing identifying the properties affected by the
13 proposed attachment was mailed to the last known address of each landowner within the lake district
14 in addition to the two property owners and a Class 1 public hearing notice was published on May 17,
15 2016 pursuant to Wis. Stat. 33.26 (1) & (2) and;

16
17 WHEREAS, the Eau Claire County Committee on Planning and Development considered the
18 attachment petition at a public hearing held on May 24, 2016 at 7:00 p.m. at the Eau Claire County
19 Courthouse at which time the public was invited to attend and be heard. Written comments and
20 additional testimony have also been accepted up to an including a subsequent meeting of the
21 Committee on Planning and Development on July 12, 2016.

22
23 WHEREAS, in review of the testimony and comments received, the Eau Claire County
24 Committee on Planning and Development is able to make the following findings pursuant to Wis.
25 Stat. 33.26 (3):

- 26
27 1. That the petition has been properly brought forth by the Board of
28 Commissioners for the Lake Altoona District in accord with Wis. Stat. 33.33
29 (2)(b).
30 2. That the district is necessary. – reaffirming Resolutions #277-74 adopted
31 December 17, 1974 and Resolution 79-80/#290 adopted December 4, 1979.
32 3. That the public health, comfort, convenience, necessity or public welfare will
33 be promoted by the establishment of the district - reaffirming Resolutions
34 #277-74 adopted December 17, 1974 and Resolution 79-80/#290 adopted
35 December 4, 1979.
36 4. That the property included in the district will be benefited by the district’s
37 establishment, and;

38
39 WHEREAS, the Eau Claire County Committee on Planning and Development recommends
40 the petition to attach two properties to the Lake Altoona District be granted and the attached order be
41 approved.

42
43 NOW, THEREFORE BE IT RESOLVED that the Eau Claire County Board of Supervisors
44 makes the following findings:

- 45
46 1. That the petition to attach properties to the Lake Altoona District has been properly
47 brought forth in accord with Wis. Stat. 33.33 (2).

2. That the district is necessary.
3. That the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of the district.
4. That the property included in the district will be benefited by the district's establishment.

BE IT FURTHER RESOLVED that pursuant to Wis. Stat. 33.26 the Eau Claire County Board of Supervisors orders the attachment of properties to the Lake Altoona District.

BE IT FURTHER RESOLVED that the boundaries of the district shall be amended to include the following described parcels through attachment:

Parcel 1: Lots 3 & 4, Block 2, Lake View Addition, Town of Washington, Eau Claire County, Wisconsin

Further described as: Tax Parcel 024-2006-05-000

Parcel 2: Lot 8, Block 2, Lake View Addition, Town of Washington, Eau Claire County, Wisconsin

Further described as: Tax Parcel 024-2006-10-000

BE IT FURTHER RESOLVED that any person aggrieved by the County Board's decision may petition for circuit court review within 30 days of the decision.

ADOPTED:

Committee on Planning and Development

Dated this _____ day of _____, 2016.

YK/LG



EAU CLAIRE COUNTY COMMITTEE ON PLANNING & DEVELOPMENT

STAFF ANALYSIS AND RECOMMENDATION

PETITION TO ATTACH TERRITORY TO THE LAKE ALTOONA DISTRICT:

PUBLIC HEARING DATE: May 24, 2016

STAFF CONTACT: Lance J. Gurney, Director

APPLICANT: Board of Commissioners – Lake Altoona District

PUBLIC HEARING DATE: May 24, 2016

REQUEST: Petition to attach two contiguous properties to the Lake Altoona District

SUMMARY

The Board of Commissioners for the Lake Altoona District submitted a petition to attach two properties to the District's boundary to the County Clerk for Eau Claire County on May 4, 2016. The mechanism for attachment of property to a lake district is set forth in Wis. Stat. §33.33(2), which refers to the procedures and standards provided in Wis. Stat. §33.26(3). For attachment proceedings, the County Board is charged with appointing a committee to conduct the hearing (P&D Committee appointed via Resolution 16-17/013) within 30 days of receipt of the petition, which was conducted on May 24, 2016. The P&D Committee has three months from the date of the hearing to report to the County Board of its findings and recommendations. Within 6 months of the date of the hearing, the County Board shall issue its order either approving or denying the attachment as supported by its findings.

BACKGROUND

Lake Altoona District:

On December 10, 1974, a petition was filed with Eau Claire County requesting establishment of a public inland lake protection and rehabilitation district for Lake Altoona. Following the required public hearing held in accordance with Wis. Stat. §33.26, the County Board issued its finding of facts to support the creation of the Lake District and adopted Resolution #277-74 ordering creation of the Lake Altoona District as of January 3, 1975. This order was reaffirmed on December 4, 1979 by Resolution 79-80/#290 by the Eau Claire County Board of Supervisors.

The two properties that are the subject of this attachment petition were included within the official boundary and map adopted as part of the creation in both 1974 and 1979.

APPLICABLE STATUTORY REQUIREMENTS

Wis. Stat. §33.33 (2) Attachment. Contiguous territory may be attached to a district upon petition by the owner or motion of the commissioners.

- (a) *Petition.* A petition by an owner, directed to the district and requesting attachment, may be accepted by a majority vote of the commissioners, upon which the attachment shall become effective.

(b) *Motion*. If the commissioners by motion initiate attachment proceedings, they shall notify the owners of the territory contemplated for attachment and the county board. The County Board shall schedule a hearing on the motion, using the procedure of s. 33.26 as far as is applicable. Following the hearing, the board shall make a finding on the necessity of attachment of territory, using the standards of s. 33.26(3), and shall declare the territory to be either attached or not. Appeals of the board's decision shall be taken under s. 33.26(7).

History: 1973 c. 301; 1975 c. 197; 1981 c. 20; 1989 a. 159; 2003 a. 275.

It is not always necessary for the petitioner in a detachment proceeding to prove that there has been a change in circumstances since the district was created. The finding of benefit to property required under s. 33.26 (3) in forming a district is not the same as the finding that the property is not benefited required under s. 33.33 (3) to detach a property from the district. The s. 33.26 (3) finding is general and predictive. Section. 33.33 (3) requires an individualized evaluation of property under present circumstances. *Donaldson v. Board of Commissioners of Rock-Koshkonong Lake District*, 2004 WI 67, 272 Wis. 2d 146, 680 N.W.2d 762, 01-3396.

Although not specified, the right to review under sub. (3) is by statutory certiorari. *Donaldson v. Board of Commissioners of Rock-Koshkonong Lake District*, 2004 WI 67, 272 Wis. 2d 146, 680 N.W.2d 762, 01-3396.

Wis. Stat. §33.26 Hearings, time, notice, boundaries, approval, limitations.

(1) Upon receipt of the petition the county board shall arrange a hearing to be held not later than 30 days from the date of presentation of the petition, and shall appoint a committee to conduct the hearing. At the hearing all interested persons may offer objections, criticisms or suggestions as to the necessity of the proposed district as outlined and to the question of whether their property will be benefited by the establishment of such district. Any person wishing to object to the organization of such district may, before the date set for the hearing, file objections to the formation of such district with the county clerk.

(2) Notice announcing the hearing and stating the boundaries of the proposed district shall be published in a paper of general circulation in the county in which the proposed district is located as a class 1 notice, under ch. 985, and shall be mailed by the county board to the last-known address of each landowner within the proposed district.

(3) The committee shall report to the county board within 3 months after the date of the hearing. Within 6 months after the date of the hearing, the board shall issue its order under this subsection. If the board finds, after consideration of the committee's report and any other evidence submitted to the board, that the petition is signed by the requisite owners as provided in s. 33.25, that the proposed district is necessary, that the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of the district, and that the property to be included in the district will be benefited by the establishment of the proposed district, the board, by order, shall declare its findings, shall establish the boundaries and shall declare the district organized and give it a corporate name by which it shall be known. Thereupon the district shall be a body corporate with the powers of a municipal corporation for the purposes of carrying out this chapter. If the board does not so find, the board, by order, shall declare its findings and deny the petition.

(5) The department shall be notified in writing of the hearing for the creation of the district at the time the hearing date is set.

(6) In establishing the district, the county board may change the boundaries from those originally proposed. However, lands not originally proposed for inclusion may not be included until a public hearing is held under this section.

(7) Any person aggrieved by the action of the board may petition the circuit court for judicial review. A verified petition shall be presented to the court not more than 30 days after the decision of the board, and shall specify the grounds upon which the appeal is based.

History: 1973 c. 301; 1979 c. 34 s. 2102 (39) (g); 1981 c. 20; 1991 a. 316; 1993 a. 167; 1995 a. 227; 2003 a. 275.

Although not specified, the right to review under sub. (7) is by statutory certiorari. *Donaldson v. Board of Commissioners of Rock-Koshkonong Lake District*, 2004 WI 67, 272 Wis. 2d 146, 680 N.W.2d 762, 01-3396.

FINDINGS/STANDARDS

Wis. Stat. §33.26(3) sets forth four standards or findings that must be verified and made by Eau Claire County in order to approve the attachment request, as follows:

a. The petition is signed by the requisite number of owners, or in this case is made by the Lake District Board of Commissioners in accord with Wis. Stat. §33.33(2).

The Board of Commissioners for the Lake Altoona District did properly initiate attachment proceedings as provided by statute to cause the matter to come before the Eau Claire County Board of Supervisors.

b. The district is necessary.

The Eau Claire County Board, on two separate previous occasions, has determined that the creation and existence of the Lake Altoona District is necessary, as is evidenced by Resolution #277-74 adopted in 1974 and Resolution 79-80/#290 adopted in 1979.

c. The public health, comfort, convenience, necessity or welfare would be promoted by the establishment of the district.

Eau Claire County has a long history of working cooperatively with the Lake Altoona District to maintain and improve water quality and access to the lake by implementation of a variety of projects including but not limited to: water quality monitoring for bacteria, lake management planning, sediment mitigation, installation of fish habitat, and boat ramp enhancements. Many of these projects continue on an annual basis in order to counteract the impacts land use impacts continue to have within the lake's and river systems watershed.

In the case of both (b) and (c), Wis. Stat. §33.33(2) recognizes that not all of the standards or findings may be applicable in the case of Attachment. Given that the district has already been created by order by the Eau Claire County Board of Supervisors with findings that support both requirements, staff believes these findings have been fully satisfied.

d. The property included in the district would benefit from the establishment of the district.

For purposes of this review and action, considerable attention has been paid to this particular standard as it relates to the matter before the County Board for consideration. Of note, the courts have differentiated the definition of "benefit" between attachment and detachment petitions, as evidenced in the Donaldson case highlighted in the footnotes under Wis. Stat. §33.33 in the previous section. For creation or attachment proceedings, this standard or finding is determined to be "general and predictive" rather than an "individualized evaluation" for detachments.

During the public hearing held on May 24, 2016, representatives of both properties subject to the attachment petition appeared in opposition and provided testimony to contest the action to attach their respective properties to the Lake Altoona District. Both testimonies centered largely on a decision rendered against the Lake Altoona District from 2007 with regard to the Board of Commissioners denial of petitions for detachment from the Lake Altoona District. In that case, Judge Gabler concluded that the Lake Altoona District had failed to evaluate each property individually and consider the specific benefits to remain in the district boundaries separately, therefore exercising its will instead of its judgement. In rendering his decision, Judge Gabler often cites the Donaldson case

and the need to consider each detachment petition on its own merits based on the evidence presented on record. In the end, Judge Gabler ruled against the Lake Altoona District's denial of the detachment petitions of five property owners brought before the Branch 3 of the Circuit Court and orders the Lake District to grant the petitioners request. Following the ruling, the Lake Altoona District Board of Commissioner reconsidered the petitions for detachment for the five property owners enjoined through the Circuit Court proceedings and subject to the order for relief, as well as the petition of 19 additional property owners. The Lake Altoona District decided to detach all parcels that were part of the original detachment request in 2007.

This background information is particularly helpful in determining benefit in this case of attachment for several reasons, including:

- The standard for finding of "benefit" under Wis. Stat. §33.26(3) for creation or attachment to a district is "general and predictive" while the standard for detachment under Wis. Stat. §33.33(2) is based on an "individualized evaluation". Therefore, Eau Claire County is not required to determine "benefit" to each specific property in this matter. This is clarified and supported in the *Donaldson* case. In essence, the county board's decision is considered a legislative decision, which is an exercise of judgement and policy taking into account the board's knowledge of the community.
- Each of the properties that were specifically reviewed as part of the Circuit Court case in 2007 were non-riparian owners, meaning that "benefit" did not include direct access to the water within the established boundaries of the Lake Altoona District. In this matter of Attachment, both property owners do indeed own frontage on the Eau Claire River, which serves as the incoming headwaters to Lake Altoona. The Eau Claire River does not exist independently of Lake Altoona, nor does Lake Altoona exist independently of the Eau Claire River. Lake Altoona is an impoundment of the Eau Claire River. Therefore, the two features are interconnected and interrelated.
- The properties included within this attachment petition brought forth by the Lake Altoona District Board of Commissioners were included within the original boundaries of the Lake Altoona District and are currently surrounded by riparian property owners who remain in the district boundaries. In fact, all privately-owned riparian property owners on Lake Altoona and the Eau Claire River upstream within two miles have been included in the boundary, except for the two properties subject to this attachment petition that were detached in 2007. According to "People of the Lakes – A Guide for Wisconsin Lake Organizations" public in 2006 by the WDNR and UW-Extension, "boundary changes should only be made at the edge of a district, deletions should not create holes in the district and noncontiguous property should not be added" (page 52). The Lake Altoona District's petition to "reattach" the two subject properties will again ensure all benefited riparian owners will be included within the established Lake Altoona District boundary, thereby ensuring equality with other private riparian owners. A decision to issue an order denying the attachment would in essence, continue or maintain a hole within the district boundary with respect to riparian owners.
- A second predominate argument provided by both property owners at the public hearing focused on use of the "lake" versus the "river". One property owner indicated that he does not utilize the lake at all, but rather boats within the river itself. The second property owner testified that he seldom uses the lake and therefore is not benefitted by its existence. In both cases, the property owner attempts to include "use" in the definition of "benefit". Although benefit is not defined by state statutes, it can mean many things, including but not limited to use. Having direct access or view to a healthy waterbody can be considered a benefit. Removal of sediment to maintain navigation corridors can be considered a benefit. Installation of habitat structures for fish and other aquatic species that maintain or enhance the recreational opportunities for the entire lake system can be considered a benefit.

Enhanced property values with access to a lake can also be considered a benefit. In all of these examples, the Lake Altoona District has established a history of active management of the lake for the benefit of property owners, particularly riparian owners.

- Finally, it should be noted that not all of the activities of the Lake Altoona District have been focused on the lake itself. In order to better address concerns of sedimentation of Lake Altoona (which is a common occurrence for impoundments) the Lake Altoona District constructed a sediment trap upstream of the lake. This sediment trap is located less than 1/4 mile upstream of the subject properties and is valuable in ensuring that navigation remain possible to the lake. Even more, the Lake Altoona District completed a significant sediment removal project this last winter at the mouth (delta) of Lake Altoona to maintain and improve access to and from the Eau Claire River upstream.

STAFF RECOMMENDATION AND FINDINGS:

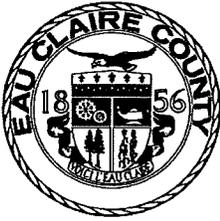
In evaluating this attachment petition, the Board must consider the four standards for creating or attaching properties to a lake district found in Wis. Stat. §33.26(3) and relevant Wisconsin case law. An order to approve or deny the petition to attach must state its reasoning why an application did or did not meet the statutory criteria.

Staff has reviewed the petition for attachment submitted by the Board of Commissioners for the Lake Altoona District, information and testimony provided at the public hearing, additional written information provided since the date of the hearing on May 24, 2016, Chapter 33 of the Wisconsin Statutes, and relevant case law including both the 2007 Gabler decision as well as the 2004 Donaldson decision.

Based on this information and the information contained within this report, staff believes a recommendation for approval of the attachment petition by the Lake Altoona District is supported by the findings of the four standards found in Wis. Stat. §33.26(3). Specifically, as in the contested finding of benefit by the property owners, staff finds that:

- the Lake Altoona District engages in lake management projects encompassing both the lake and inflowing river to maintain and enhance water quality, recreational use, and protection of property.
- The subject properties are both riparian owners, surrounded by riparian property owners who are included within the district boundaries. An order to deny the attachment would continue to support a hole in the boundary and cast inequitable benefit to individual property owners.
- Use is a personal choice and not a fair gauge of benefit onto the property itself. The standard for consideration is whether or not the property is benefitted for inclusion in the district boundary, not the individually property owner. Staff concludes that the particular properties in question for the attachment are indeed benefitted from the activities of the Lake Altoona District.
- The standard for determining benefit is "predictive and general", meaning it is an exercise of judgement and policy. Both property owners have inaccurately presented information based on the findings that must be made in a detachment proceeding which require an "individualized evaluation" of benefit upon their respective properties.

Therefore, staff recommends the Planning and Development Committee issue findings in support of the Petition for Attachment to the Lake Altoona District as brought forth by the Board of Commissioners and recommend approval of the Order to the Eau Claire County Board of Supervisors.



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CORPORATION COUNSEL

Keith R. Zehms

MEMORANDUM

TO: Lance Gurney, Planning and Development
FROM: Richard Eaton, Assistant Corporation Counsel
DATE: 7/1/16
SUBJECT: Attachment of Properties to Lake Altoona District

Question Presented: Should the Committee on P&D recommend attachment of the parcels in question to the Lake Altoona District?

Legal Opinion: The June 20th letter/memo drafted by Attorney Garrett Nix and provided to P&D analyzes the current situation (Hagen and Allen properties) against the litigation which took place in 2007, which dealt with detachment petitions. Attorney Nix properly cites the Wisconsin Supreme Court case *Donaldson v. Bd. Of Com'rs of Rock-Koshkonong Lake District.*, 272 Wis.2d 146 (2004). Most importantly, Attorney Nix distinguishes between the 2007 litigation and the matter at hand—the 2007 decision authored by Judge Gabler in Eau Claire County Circuit Court dealt with detachment petitions, whereas the current matter is related to the attachment of properties to a lake district.

For analysis, I would simply point to Attorney Nix's letter/memo. Attorney Nix cites the proper standards for attachment/detachment of parcels. In my opinion, based on review of statutes, case law and Attorney Nix's letter/memo, there is a strong basis for recommending attachment of the parcels in question.

June 20, 2016

Eau Claire County
Dept. of Planning & Development
Eau Claire County Courthouse, Rm. 3344
721 Oxford Avenue
Eau Claire, WI 54703-5212

Re: Attachment of Properties to Lake Altoona District

Dear Eau Claire County Plan and Development Committee,

This letter is in support of the Lake Altoona Lake District's petition to attach two parcels to the Lake Altoona District (the "Lake District"). As was orally presented to the Committee on May 24, 2016, the Lake District has petitioned to attach, pursuant to Wis. Stat. s. 33.33(2), two parcels to the Lake District, being tax parcel 024-2006-10-000 owned by Melanie A. Haugen, and tax parcel 024-2006-05-000 owned by Michael K. and Christine L. Hagen. Because the legal analysis for both properties is the same, I will refer to the two properties herein as the "Parcels."

Relevant History

The history in regard to the Parcels is that they were detached from the Lake District in 2007. At the public hearing on May 24, 2016 the Committee was made aware of the history regarding certain properties which were engaged in litigation with the Lake District in 2006-2007. The litigation involved the Lake District's denial of certain detachment requests. Specifically, five (5) property owners filed a certiorari action with the Eau Claire County Circuit Court to review whether the Lake District had properly denied their requests for detachment from the Lake District. Even though the Parcels were denied detachment, the Parcels were not one of the five property owners who were parties to the 2007 certiorari action.

On July 18, 2007, Judge Gabler issued a written opinion whereby he granted the petitioners' certiorari petition, and ordered the Lake District to detach the Parcels involved (a copy of the written decision is enclosed herein). In making its decision, the Court did not decide that the parcels involved in the litigation lacked the minimum benefits such that they should be detached, rather, the court decided that the Lake District had failed to present evidence at the original hearing necessary to support the Lake District's denial of the detachment request. Therefore, because the Lake District had not submitted the necessary evidence at the original hearing, the Lake District's decision must be overturned. It is especially important to note when reviewing the circuit court's decision, that none of the parcels included in the certiorari action were riparian, whereas, the Parcels both have frontage on the water.

Even though the Parcels were not named parties in the court action referenced above, once the circuit court rendered its July 18, 2007 order, the Lake District decided to detach all parcels that were involved in the original detachment request, including the Parcels.

At the May 24, 2016 Committee meeting, the owners of the Parcels erroneously represented to the Committee that the Parcels were “subject to a court order” for detachment. While I am certain that the Parcel owners are not intentionally trying to mislead the Committee, it is clear that they do not understand the law. To be clear, the Parcels are not subject to a continuing order for detachment. There is nothing in the May 24, 2016 order that precludes or prohibits attachment to the Lake District. In fact, the Wisconsin Supreme Court has explicitly held that detachment from a Lake District is not irrevocable. *Donaldson v. Board of Commissioners of Rock-Koshkonong Lake District*, 2004 WI 67, ¶164 (a courtesy copy of the *Donaldson* decision is enclosed herein). Thus, the fact that the Parcels were previously detached does not mean that the Parcels cannot be reattached at a later date.

In early 2016, the Lake District caused a map to be created showing the properties that are located within the Lake District. A copy of said map was provided to the Committee at the public hearing and a courtesy copy is enclosed herein. The Lake District has initiated a procedure of periodically reviewing the properties around Lake Altoona to determine whether any properties should be attached or detached. It was discovered that despite being riparian properties, the Parcels were not included within the Lake District. Upon discovery, the Lake District passed a motion to attach the Parcels which brought us to the Committee on May 24, 2016.

Procedure

At the May 24th public hearing, the issue was raised by the Parcel owners that the Lake District had failed to prove a benefit prior to passing the motion for attachment. It is important to note that the process for *attachment* is different than the process for *detachment*. See Wis. Stat. s. 33.33(2)(b); 33.33(3). When a petition for “detachment” is brought (as was brought in 2006 by the property owners discussed above), the Lake District Board of Commissioners is the entity which makes the original decision as to whether to deny or approve of the requested detachment. Wis. Stat. s. 33.33(3). Conversely, for an “attachment,” the Lake District Board of Commissioners simply pass a motion to attach the parcel, and the County Board makes the ultimate determination of whether the parcel should be attached. Wis. Stat. 33.33(2)(b).

As was properly identified in the Eau Claire County Department of Planning and Development memorandum dated May 19, 2016, from Director Lance J. Gurney, the standard to be applied to this decision is fairly straightforward. There are four findings the Eau Claire County Board must ultimately make:

- (1) The petition for attachment is made by the Commissioners of the District Board.
- (2) The district is necessary.
- (3) The public health, comfort, convenience, necessity or welfare would be promoted by the establishment of the district.
- (4) The property included in the district would benefit from the establishment of the district.

As is further identified in the May 19th memorandum, the first three elements have already been established and are not argued. The dispositive sole element, is whether the Parcels would benefit from inclusion in the district – stated differently, does the existence of the Lake District benefit the Parcels?

Application of Applicable Law

Unfortunately, the Wisconsin legislature has been less than clear in regard to governance of lake districts. For instance, the term “benefit” is not defined in Wisconsin statutes. Thus, the factors to consider in determining whether the Parcels will benefit from inclusion in the Lake District is up to the Eau Claire County Board to decide. As guidance, it is useful to look at the *Donaldson* decision, wherein the Wisconsin Supreme Court listed factors which were implemented by the Rock-Koshkonong Lake District in determining whether a property is “benefited” by inclusion in the Lake District in the context of a detachment. The factors the Court reviewed are as follows:

- (1) The physical characteristics of the property.
- (2) Its use (recreational, commercial, residential, etc.)
- (3) Its relationship to the lake in terms of whether:
 - a. It is riparian;
 - b. It has private access lake rights to the lake;
 - c. Its proximity to public access to the lake;
 - d. It is within view of the lake; and
 - e. It is within the watershed or ground water table of the lake.
- (4) Whether the value of the property would be enhanced if the lake were to be in reasonably clean, attractive and usable condition; or whether the value of the property would be diminished if the lake were to be in a degraded condition.
- (5) Whether detachment of the property will result in any “hole” or “island in the boundaries of the District.
- (6) Whether circumstances surrounding the property’s inclusion in the District have changed.
- (7) Any other factors relevant to whether the property is benefited by continued inclusion in the District.

The above factors are not law (as specifically stated by the Supreme Court) and no one factor is dispositive. Such factors are only cited to give the Committee an idea of the factual issues that have been analyzed in relation to other lake districts.

Here, the most relevant factors are that both of the Parcels are riparian and have water frontage which provides water access to Lake Altoona by private access. Further, if the properties are not included in the Lake District, their non-inclusion would create a “hole” or “island” in the Lake District, as all of the properties in between the Parcels are included in the Lake District. The Committee heard testimony on May 24, 2016, during public comment, that the Lake District recently engaged in a significant dredging project which improved the river delta near the Parcels, thereby improving access to/from the river delta area thereby specifically benefitting the Parcels. Both of the Parcels have waterfront views and are

located within the watershed of Lake Altoona. Last, a healthy Lake Altoona clearly increases the values of the Parcels from a recreation standpoint. If Lake Altoona is in good condition, the Parcel's access to Lake Altoona becomes more valuable.

The Committee heard testimony from the owners of the Parcels, who seemed to argue that the Lake District is of no benefit to them specifically, because they don't utilize Lake Altoona. This is an important distinction, as the question for Eau Claire County to ultimately answer is not whether the Lake District benefits the individual parcel owners, rather, the question is whether the Lake District is a benefit to the Parcels in general. There is no precedence that an individual owner living within a Lake District's boundaries can be exempt from inclusion in the Lake District due to the fact that such particular landowner chooses not to utilize the lake's resources.

Conclusion

Eau Claire County is presented with a simple factual case. The Lake District seeks to add two riparian properties, located within the boundary of the previously established Lake District. The Parcels have water access to Lake Altoona and clearly will benefit, financially (in increased property values) and recreationally, from a healthy Lake Altoona. The Lake District respectfully requests that the Committee recommend that the Eau Claire County Board attach the Parcels.

Sincerely,

WELD RILEY, S.C.



Garrett W. Nix

Enclosures

cc: Lake Altoona Rehabilitation District
Melanie A. Hagen
Michael K. and Christine L. Allen

DONALD and CARRIE CRANE
Petitioners,

DECISION AND FINAL ORDER

vs.

LAKE ALTOONA LAKE
REHABILITATION DISTRICT,
Respondent.

CASE NO. 06CV12

RECEIVED

JAMES R. and WANETA THILL, and
WANETA THILL TRUST,
Petitioners,

JUL 19 2007

Weld, Riley, Prenz & Ricci, S.C.

vs.

LAKE ALTOONA LAKE
REHABILITATION DISTRICT,
Respondent.

CASE NO. 06CV13

RICHARD and ROXANNE ROLLEFSON
Petitioners,

vs.

LAKE ALTOONA LAKE
REHABILITATION DISTRICT,
Respondent.

CASE NO. 06CV40

DAVID WESTRATE, and
WESTERBERRY FAMILY TRUST,
Petitioners,

vs.

LAKE ALTOONA LAKE
REHABILITATION DISTRICT,
Respondent.

CASE NO. 06CV229

DAVID and SUSAN ROWE,
Petitioners,

vs.

LAKE ALTOONA LAKE
REHABILITATION DISTRICT,
Respondent.

CASE NO. 06CV246

PROCEDURAL BACKGROUND

This is an appeal taken pursuant to §33.26(7) and §33.33(3) Wis. Stats. The petitioners in each of these five cases sought to have their properties detached from the Lake Altoona Lake Rehabilitation District. The Board of Commissioners of the Lake Altoona Lake Rehabilitation District held hearings on the petitions. In each case, the detachment request was denied, and the Commissioners issued a written order denying detachment. Thereafter, each of the petitioners filed a petition with the Clerk of Circuit Court seeking review of the adverse decisions. The dates concerning these events are as follows:

Donald and Carrie Crane v Lake Altoona Lake Rehabilitation District
Case No. 06CV12

Hearing Before Commissioners:	November 30, 2005
	December 5, 2005
Order Denying Detachment:	December 21, 2005
Date of Filing Petition Seeking Review by the Circuit Court:	January 4, 2006

James R. and Waneta Thill, and Waneta Thill Trust v Lake Altoona Lake Rehabilitation District
Case No. 06CV13

Hearing Before Commissioners:	November 17, 2005
	December 5, 2005
Order Denying Detachment:	December 21, 2005
Date of Filing Petition Seeking Review by the Circuit Court:	January 4, 2006

Richard and Roxanne Rollefson v Lake Altoona Lake Rehabilitation District
Case No. 06CV40

Hearing Before Commissioners:	November 17, 2005
	December 5, 2005
Order Denying Detachment:	December 21, 2005
Date of Filing Petition Seeking Review by the Circuit Court:	January 20, 2006

David Westrate And Westerberry Family Trust v Lake Altoona Lake Rehabilitation District
Case No. 06CV229

Hearing Before Commissioners:	February 22, 2006
	February 23, 2006
Order Denying Detachment:	March 15, 2006
Date of Filing Petition Seeking Review by the Circuit Court:	April 14, 2006

David and Susan Rowe v Lake Altoona Lake Rehabilitation District
Case No. 06CV246

Hearing Before Commissioners:	February 22, 2006
	February 23, 2006
Order Denying Detachment:	March 15, 2006
Date of Filing Petition Seeking Review by the Circuit Court:	April 21, 2006

These five cases were all assigned to Branch 3 for the convenience of the parties and for judicial administrative efficiency. Although these five cases have technically not been consolidated with one another, they have been subject to common scheduling orders and pre-trial orders. (See Scheduling Order of June 9, 2006.) Because some parts of the Board's record are common to all of the parcels, and other parts relate specifically only to a particular landowner, the record from the Board of Commissioners has been filed in 06CV12.¹ Common briefs have been filed by the parties on issues relating to all five parcels, and individual briefs have been filed in each respective Court file for the purpose of addressing issues peculiar to a particular piece of property. (See Briefing Schedule dated November 7, 2006.)

APPLICABLE LAW

The law governing the outcome of these five cases is contained in the relatively recent Supreme Court decision in Donaldson v. Board of Commissioners, 2004 WI 67, 277 Wis.2d 146, 680 N.W.2d 762. The Donaldson case was identical to these five cases in that the petitioner, Arthur Donaldson, tried to get his non-riparian farm land detached from the Rock-Koshkonong Lake District. Writing for the majority, Justice David T. Prosser set forth the proper procedure and principles the Circuit Court is to employ whenever a land owner appeals from an adverse determination denying a request to detach property from a lake district.

¹ When transcripts of the hearings were filed with the Clerk of Circuit Court, on July 14, 2006, the only transcripts filed were ones covering the dates of December 5, 2005, February 22, 2006 and February 23, 2006. No transcripts of proceedings were received from the hearings of November 17, 2005 or November 30, 2005. The absence of transcripts from the November hearings was drawn to counsel's attention by a letter from the Court dated October 2, 2006. The record was never supplemented, and the Court did not have the benefit of reading transcripts from the November 2005 hearings. This deficiency in the record has not hampered the Circuit Court's review. The briefs of counsel reveal that as to the Crane, Thill and Rollefson cases, there is no disagreement regarding the testimony presented by those petitioners before the Board.

In the Donaldson case, the Supreme Court acknowledges the Wisconsin Legislature created Chapter 33 of the Wisconsin Statutes, in 1974, to provide protection to inland lakes. The Legislature said that environmental values, wildlife, public rights, navigable waters and the public welfare are all threatened by the deterioration of public lakes. The Legislature found that protection and rehabilitation of public inland lakes are in the best interest of the citizens of the State of Wisconsin. The Legislature noted lakes form an important basis for the State's recreation industry and that increasing recreational use of public waters justifies State action to enhance and restore the potential of the State's inland lakes. The Legislature therefore concluded it was necessary to create a program of lake protection and rehabilitation. The Legislature decided local districts should be formed by persons directly affected by the deteriorating conditions of inland waters and who are willingly able to assist financially, or through other means, in remedying lake problems. Hence, the legislature created lake districts that are corporate bodies with the powers of a municipal corporation. As a municipal corporation, property constituting lake districts have broad powers, including, but not limited to, the power to sue and be sued, make contracts, purchase, lease or otherwise acquire property, disburse money, borrow money and do any other acts necessary to carry out a program of lake protection and rehabilitation. To finance its operations, a lake district has the power to impose taxes and special assessments. Donaldson, 2004 WI 67, ¶¶ 21-24.

The Donaldson case teaches that detachment petitions, such as these, are decided by the Commissioners upon the basis of whether the property proposed for detachment is benefited by continued inclusion in the lake district. To detach property, the lake district Board must decide that *the property in question is not benefited by continued inclusion in the district*. This determination requires *an individualized evaluation* of the specific piece of property seeking detachment under the *then existing circumstances*. The property owner seeking detachment does not have to prove a change in circumstances from the point in time when the parcel was

originally included in the lake district. However, the lake district Commissioners may utilize hindsight and foresight as they make their fact-based detachment determination on an individual parcel. Donaldson, 2004 WI 67, ¶¶ 41, 58 and 59. Although the petitioner seeking detachment has the burden of persuading the Commissioners that the piece of property in question is no longer benefited by continued inclusion in the district, the lake district Commissioners have to specifically articulate why property should remain in the lake district if the petition for detachment is denied. There must be some articulable, discernible reason why any property is required to remain in a lake district and pay an additional layer of taxes when hundreds or thousand of other parcels in the vicinity are not included in the district. Donaldson, 2004 WI 67, ¶¶ 60, 64 and 105.

If a land owner's petition for detachment from a lake district is not granted by the Commissioners, then the property owner can seek a review of the Board's action before the Circuit Court. Review of an adverse detachment determination does not permit the Circuit Court to have an evidentiary hearing, or to decide the merits of the issue on its own, or to substitute its judgment for the judgment of the Commissioners. However, the Circuit Court is empowered to make sure the lake district Board performed its duty; that is, make an individualized determination whether the parcel in question is, or is not, benefited by continued inclusion in the lake district. Donaldson, 2004 WI 67, ¶¶ 65 and 73.

Because a lake district Board performs a legislative function when it considers whether to detach property from a lake district, the lake district Board's decision is presumed to be correct. When a Circuit Court reviews the Board's action to make sure an individualized determination was made, as to whether or not the parcel is or is not benefited by continued inclusion in the lake district, the Circuit Court is limited to the following inquiries:

1. Did the lake district Board keep within its jurisdiction?
2. Did the lake district Board proceed on a correct theory of law?

3. Was the lake district Board's action arbitrary, oppressive or unreasonable; and did the action represent its will and not its judgment?
4. Is there evidence in the record such that the Commissioners might reasonably have made the decision not to grant the petition for detachment?

If the lake district Board falls short in any one of these four enumerated areas, such failure is an erroneous exercise of legislative discretion. If the Board fails the Circuit Court review, then the Circuit Court must remand the petition for detachment back to the lake district for action consistent with the Circuit Court's decision. Donaldson, 2004 WI 67, ¶¶ 4, 65 and 73.

REVIEW OF THE EVIDENCE PRESENTED TO THE LAKE DISTRICT COMMISSIONERS

A review of the record and of the parties' briefs reveals the following facts and de facto stipulations with respect to the following parcels:

Donald and Carrie Crane have a year-round residence at 1004 Lake Road, Altoona, Wisconsin. Their property is included in the lake district. Their property line is approximately 900 feet from the lake as the crow flies, but they are 8/10 of a mile by road from the public lake access. The Cranes have no direct private lake access on property they own. They have no easement access. The Cranes do not use the lake or the park. If they did decide to use either the lake or the park, they would have to pay the fee like every other member of the public. When the leaves are in foliage, Mr. and Mrs. Crane do not have a view of the lake. Only when all the leaves drop from the trees in the late fall, and until the buds come out in the spring, do the Cranes have a partial view of the lake. Even during the winter months, the lake view is partially obscured by the skeletal elements of the bare deciduous trees. Mr. Crane testified his property's proximity to the lake has no affect on the use or value of his land.

James and Waneta Thill use 430 South Beach Drive, Altoona, Wisconsin as a summer residence. This property is included in the lake district. Although the Thill property line is

approximately 900 feet from the lakeshore as the crow flies, direct access from their property to the public landing is 6/10 of a mile. As with the Cranes, Mr. and Mrs. Thill have no direct access to the lake. They have no easements. If they are going to use the lake or the park, they must pay the fee like other members of the public. Mr. and Mrs. Thill do not use the lake or the park. Mr. and Mrs. Thill have the same view of the lake as Mr. and Mrs. Crane. They have a partial lake view only when the deciduous trees have dropped their leaves. Even then, they only have a partial view of the lake. Mr. Thill opines the presence of the lake and its water quality has no affect on his property.

Richard and Roxanne Rollefson occupy a year-round residence at 712 Lake Drive, Altoona, Wisconsin. This property is in the lake district. The Rollefson property line is approximately 700 feet from the lake as the crow flies. However, the public landing is 4/10 of a mile by road to the public park. Mr. and Mrs. Rollefson have no private lake access. They have no easement access. If the Rollefsons are going to use the lake or the public park, they must pay the fees that every other member of the public pays. Like the Cranes, Mr. and Mrs. Rollefson only have a partial view of the lake. They can actually only see the lake when the deciduous trees have dropped their leaves. Even then, the view is only a partial view. The Rollefsons also believe the presence of the lake and its water quality has no affect on their property.

Brian Westrate testified on behalf of David Westrate and the Westerberry Family Trust that own the year-round residence located at 6101 North Shore Drive, Eau Claire, Wisconsin. This parcel is in the lake district. Although the lot line of this parcel is only 150 feet from the lakeshore, the Westrate land between the property line and the house is, for all practical purposes, unusable. Starting at a point a short distance from the residence, the land up to the edge of the lot line is unbuildable because it is low land. The Westrate residence is more than two miles away from the nearest boat landing by road. As with the Cranes, the Westrate residence has no private lake access and no easement access. The residence at the Westrate

home must use the public park and landing and pay a fee like other members of the public. The Westrate home, like the Crane home, only has a partial view of the lake. In the winter months, when the deciduous trees have shed their leaves, there is a partial view. However, like the Crane residence and the other residences, the view is through the skeletal structure of the bare deciduous trees. Brian Westrate testified the water quality of the lake does not and will not affect their property or their decision to live at 6101 North Shore Drive.

David and Susan Rowe have a year-round residence at 920 Lake Road, Altoona, Wisconsin. This property is in the lake district. Although the edge of their property is approximately 700 feet from the lakeshore, the Rows have no private lake access. They have no easements to the lake, and they must use the public park and landing and pay a fee like everyone else if they are going to avail themselves of the lake. At the time of the evidentiary hearing before the Board, David and Susan Rowe had a partial view of the lake. When they first moved onto their parcel 23 years earlier, there were no trees obstructing their view of Lake Altoona either in the summer or the winter. However, in recent years, the trees on the County property between their land and the lakeshore have grown up such that now their view of Lake Altoona is obstructed. A significant portion of their view has disappeared; and as the trees continue to grow, their view will be further obstructed. Since the trees grow on County land, the Rows have no authority to trim the trees to regain their view. In the Board's written order denying the Rowe's detachment petition, the Board found in part, "each owner noted that their view is unobstructed." This "finding of fact" by the Commissioners is completely unsupported by the evidence. Nothing in the record suggests that either David or Susan Rowe admitted their view was unobstructed. David Rowe opined that his property's proximity to the lake and the condition of the lake does not affect the value of his property or benefit his property.

During the course of the evidentiary hearings of November 17, 2005, November 30, 2005, December 5, 2005 and February 22, 2006 and February 23, 2006, there was testimony and

exhibits from a variety of different realtors and real estate appraisers indicating that non riparian property owners, such as these petitioners, derive no benefit from being in the Lake Altoona Lake Rehabilitation District. These realtors and appraisers unanimously thought that partial, obstructed views of Lake Altoona provide no benefit to the property owners or to those who reside in the homes on these properties. These same realtors and appraisers were adamant in their believe that these petitioners, being non riparian owners, were actually harmed by being in the Lake Altoona Lake Rehabilitation District because of the added layer of taxation imposed by the Board. The lake district taxes are an impediment to the value of these homes and make them less marketable.

Two other witnesses testified who seemed to be sympathetic to the plight of the Board. Jean Schomisch, a supervisor of the Land Conservation Department, testified. However, all of her testimony was general and related to her job as a liaison between lake districts and the counties. (Tr. 12-5-05, p. 17, lines 11-18). The other witness, Rita Provoznik, is a real estate agent with Edina Realty. She is not an appraiser. Ms. Provoznik talked about general market forces affecting property values. Ms. Provoznik opined some people would pay top dollar for property just to have a view of the lake even if they never use the water. Ms. Provoznik agreed with a leading question propounded by the Chair of the Commissioners that people would be dissuaded from buying a property on a lake that has water quality issues.² Ms. Provoznik did not address any of the petitioners' individual parcels. (Tr. 12-5-05, pp. 10-16).

No witnesses testified to any individualized benefit accruing to: 1004 Lake Road, 430 South Beach Drive, 712 Lake Drive, 6101 North Shore Drive or 920 Lake Road.

On February 2, 2007 petitioners filed a motion asking that the Court consider certain Findings of Fact, Conclusions of Law and an Order of the State of Wisconsin, Division of

² None of the properties in question are "on a lake." Therefore, Ms. Provoznik's answer cannot form the basis of a finding of benefit.

Hearings and Appeals. Although respondent, Lake Altoona Lake Rehabilitation District, did not file a written objection to the motion, the petitioners never scheduled a hearing on the motion as required by §802.01(2)(a) Wis. Stats. Since there was never a hearing on petitioners' motion and since the decision of the Administrative Law Judge is outside the scope of the record in these detachment proceedings, the Court is not considering the materials from the State of Wisconsin Division of Hearings and Appeals.

**SYNTHESIS OF EVIDENCE PRESENTED WITH THE COMMISSIONER'S
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Orders Denying Detachment, which contain the Findings of Fact and Conclusions of Law of the Board, are attached hereto as Exhibits A, B, C, D and E.

The Findings and Conclusions of the Commissioners are inadequate in two respects. First, they show no articulable, discernible reason why these parcels are benefited by remaining in the lake district; and second, no individualized evaluation of each specific piece of property was made.

With respect to the Crane's, paragraphs 6 and 7 of the Findings of Fact are legally and legislatively insignificant. The Board's finding in paragraph 8, that Crane's property, by virtue of its proximity to the lake, will continue to be enhanced in value by continued inclusion in the district, is unsupported by the record. Paragraph 4 of the Board's Conclusions, that the Crane parcel will be benefited by continued inclusion in the lake district, is unsupported by the record. Nothing in the record or in the Findings of Fact explain how the Crane parcel will continue to be benefited by continued inclusion in the lake district.

The inadequacies that afflict the Crane Findings of Fact and Conclusions of Law are replicated in the other Orders Denying Detachment. Paragraphs 6, 7 and 8 in the Thill Findings are legally and legislatively insignificant. The findings contained in paragraph 9 of the Thill Findings are unsupported by the record. Similarly, the conclusory statement that the Thill

property will continue to be benefited by continued inclusion in the lake district is unsupported -- there is no explanation how the parcel will be benefited.

The identical shortcomings manifest themselves in the Rollefson, Westrate and Rowe Orders Denying Detachment. Additional deficiencies in the Rowe Findings and Conclusions is the Board's unsupported assertions that the Rowe's property is within reasonable walking and biking distance of a public landing, that the Rowe's view of the lake is unobstructed, and if the lake were to emit noxious odors, such smells would detract from the value of the Rowe property.

A common thread running through the Board's unsuccessful attempt to find a continued benefit, are the notions that partial winter views of the lake benefit the property and that deterioration of the condition of Lake Altoona would be detrimental to the property. As noted above, these Findings are not supported by the evidence or by the record.

How are these properties benefited by having a partially unobstructed view of the lake during the late fall, winter and early spring? None of the Commissioners and no witnesses proffered by the Commissioners actually viewed the partially unobstructed view. None of the Commissioners and none of the witnesses proffered by the Board have actually seen the obstructed view of the lake. No witness testified and no evidence exists articulating in a clear and logical manner, just how these properties are supposedly benefited by being able to see a partially obscured view of the lake for only a portion of the year. The benefit was not explained or quantified and thus remains illusory. If the Crane, Thill, Rollefson, Westrate and Rowe properties are benefited by a partial view of Lake Altoona, then any parcel of real estate, wherever situated, with a partial view of the lake, at any time of the year, should be included in the lake district and pay its taxes.

The Commissioners engaged in much discussion about supposed deleterious consequences these parcels would suffer if the water quality in Lake Altoona was diminished. These musings centered upon the unpleasant visual aspects of a neglected inland lake and

offensive odors that might emanate from the same. Despite the Commissioners' concerns, there is nothing in the record supporting the notion that these landowners would even be able to see the water quality during those infrequent times of the year when they had a partial, obstructed view of the lake. Moreover, worries about bad smells wafting up from the lake are also unsupported by the record. Although a silt laden Lake Altoona would certainly severely hamper the enjoyment of riparian land owners if the lake took on attributes of a "swamp," (as one Commissioner put it) there is no testimony or exhibit suggesting unpleasant odors would accompany such a transformation. "Swamps," (also known as wetlands) are delicate and desirable ecosystems, teeming with wildlife, and are necessary for a healthy environment. There is nothing in the record suggesting that, but for activities of the Lake Altoona Lake Rehabilitation District, noxious smells would permeate the shores and appurtenant areas of Lake Altoona, or the parcels owned by petitioners.

Here, the lake district Board's action failed to meaningfully address or rebut the grounds given by petitioners for detachment. The Board failed to meaningfully explain why a partial view of the lake and unsubstantiated concerns of bad odors related to a "benefit" for these parcels staying in the lake district. There was no showing of a direct benefit to these petitioners' property and why their property is more directly benefited than many other properties not included in the lake district. Hence, the Board's action was arbitrary and represented its will and not its judgment. Furthermore, the lack of evidence, and the Board's reasoning, was not sufficient to sustain its decision. In other words, there is not enough evidence in the record such that the Commissioners might reasonably have made the decision not to grant the petitions for detachment. Donaldson, 2004 WI 67, ¶¶ 102 and 103.

While it is true petitioners have the burden of persuading the Board their property is no longer benefited by continued inclusion in the district, and while it is true a Board's decision is presumed to be correct, these principles do not relieve a lake district Board of its responsibility to

properly exercise its judgment and make a judgment based upon evidence in the record. As the Supreme Court noted in Donaldson, if a hollow, ritualistic enumeration of reasons was sufficient to sustain a refusal to detach properties from a lake district, then a landowner's statutory detachment remedy would be rendered meaningless. Donaldson, 2004 WI 67, ¶102.

STATUTORY ANOMALIES AND THE DUTIES OF BOARD COMMISSIONERS

Although the lake district's action, in denying petitioners' request for detachment, has been described as arbitrary, representing its will and not its judgment, the use of this language should not be construed to suggest the Lake Altoona Lake Rehabilitation District Commissioners acted maliciously or carelessly. District Board Commissioners are citizen volunteers who have taken upon themselves an important duty of public service. §33.28 Wis. Stats. These Commissioners donate their time and best efforts trying to implement legislative policy for the purpose of enhancing and restoring our inland lakes. As the Supreme Court pointed out in the Donaldson decision, the lake district's statutory scheme established by the legislature has failed to articulate clear standards for what property may be included in, or excluded from, a lake district. The Supreme Court also observed that Circuit Court review of lake district action, such as this one, does not provide any meaningful protection to property owners who may be disgruntled by their initial inclusion in a lake district or who may have subsequent petitions for detachment denied. For these reasons, the Supreme Court urged the Wisconsin legislature to reexamine the statutes on lake districts to provide reasonable standards for legislative decisions in the creation and governing of lake districts. Donaldson, 2004 WI 67, ¶¶ 66, 104-109. To date, the legislature apparently has not accepted the Supreme Court's invitation in this regard.

SUMMARY

The Board's action in denying petitioners' request to have their property detached from the Lake Altoona Lake Rehabilitation District was arbitrary and represented its will and not its judgment. In addition, the record of proceedings before the Board shows there was no evidence upon which the Board could reasonably make the determination denying the petitions for detachment.

FINAL ORDER

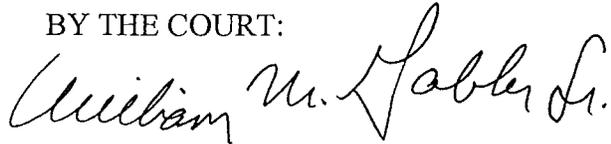
For the reasons set forth above,

IT IS HEREBY ORDERED:

1. All of the petitions for detachment are remanded back to the Board of Commissioners of the Lake Altoona Lake Rehabilitation District, and
2. The Board shall immediately grant petitioners' requests and detach their parcels from the Lake Altoona Lake Rehabilitation District.

Dated this 18th day of July 2007.

BY THE COURT:



William M. Gabler, Sr.
Circuit Court Judge, Branch 3

cc Dean R. Dietrich
William G. Thiel

**LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS**

IN RE: Detachment Petition of
Donald and Carrie Crane

**ORDER OF DENYING DETACHMENT
§33.33(3), Wis. Stats.**

Upon the basis of a Hearing held in the matter of the Detachment Petition submitted by Donald and Carrie Crane, the Cranes being represented by Attorney Dean R. Dietrich of Ruder Ware, Wausau, Wisconsin, which hearing was held on November 30 and December 5, 2005, by the Lake Altoona Lake Rehabilitation District Board of Commissioners, and upon the basis of the testimony submitted during the course of said hearing and the exhibits submitted by the petitioner and others, the Board hereby denies the Detachment of the property owned by the said Donald and Carrie Crane from the Lake District, which property is described in Exhibit "A" hereto, upon the basis of the following Findings and Conclusions.

FINDINGS OF FACT

1. Donald and Carrie Crane are the owners of the real estate described in Exhibit "A".
2. The Crane parcel is non-riparian, situated along the north side of Lake Road, and between the Crane parcel and the lakeshore is Kewin Drive and another parcel of real estate. The Crane parcel is eight tenths of a mile by road from the lake.
3. The Crane parcel is used for residential purposes by Mr. and Ms. Crane and their family, which is consistent with its zoning.
4. No legal access to the lake is attached to the Crane parcel.

5. During a portion of the year, there is an obstructed view of the lake from the Crane property.

6. Donald Crane acknowledged that if the lake were to be replaced by, for example, an ethanol plant, it would detract from the value of his property but he contended that if the lake were to become stagnant, it would have no bearing upon his property, further basing his opinion in that respect upon the statements, letters and affidavits submitted generally into the record by realtors.

7. In accord with the exhibits concerning past, present and future lake district projects pertaining to rehabilitation and preservation of Lake Altoona by the Lake District, the Lake District has undertaken and is currently involved in projects which have and will help to prevent Lake Altoona from undergoing deterioration and either being filled in or degraded by sediment, fertilizers and other materials deleterious to the health of the lake.

8. Realtors submitted letters and affidavits generally on behalf of the petitioner and others similarly situated to the effect that, in their opinions, the value of non riparian parcels was decreased by inclusion in the Lake District; however, the Board relegates this evidence to just what it is: opinions and chooses to find that given the proximity of this parcel to the lake, its value is enhanced and will continue to be enhanced by actions of the Lake District in rehabilitating and protecting Lake Altoona.

9. The Cranes submitted a power point presentation (Exhibit "43 ") and Donald Crane testified in support of their petition. Much of the information included within said presentation and in Mr. Crane's testimony consisted of opinions, rather than presenting to the Board evidence in support of their petition.

CONCLUSIONS OF LAW

1. A petition for detachment of real estate from a lake district shall be determined upon the basis of §33.33(3), Wis. Stats., which allows that a parcel of real estate may be detached upon a finding that the parcel is not benefitted by continued inclusion in the lake district.

2. The term "benefit" as is used in §33.33(3), Wis. Stats., is not defined by the legislature. According to Webster's New Collegiate Dictionary, it means: "something that promotes well being; advantage; useful aid; help."

3. The burden of persuasion is upon the owner seeking detachment of his or her parcel from the lake district. The evidence and testimony submitted in support of the Crane petition consisted primarily of opinions as to why the Crane parcel is not benefitted by its continued inclusion in the Lake District.

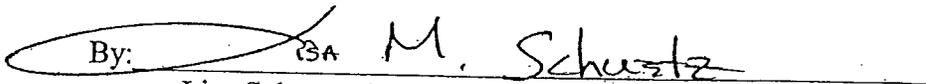
4. Due to the proximity of this parcel of property to the lake and the fact that a view can be had from it during a portion of the year and because the efforts of the Lake District toward rehabilitation and protection of Lake Altoona help to promote the value of the Crane parcel, it will be benefitted by continued inclusion in the Lake District.

ORDER

That in accord with §33.33(3), Wis. Stats., the petition of Donald and Carrie Crane is hereby DENIED.

Dated this 21 day of December, 2005.

LAKE ALTOONA LAKE REHABILITATION DISTRICT BOARD OF COMMISSIONERS

By: 

Lisa Schuetz, Chairperson

**LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS**

IN RE: Detachment Petition of
James and Wanita Thill

**ORDER OF DENYING DETACHMENT
§33.33(3), Wis. Stats.**

Upon the basis of a Hearing held in the matter of the Detachment Petition submitted by James and Wanita Thill, the Thills being represented by Attorney Dean R. Dietrich of Ruder Ware, Wausau, Wisconsin, which hearing was held on November 17 and December 5, 2005, by the Lake Altoona Lake Rehabilitation District Board of Commissioners, and upon the basis of the testimony submitted during the course of said hearing and the exhibits submitted by the petitioner and others, the Board hereby denies the Detachment of the property owned by the said James and Wanita Thill from the Lake District, which property is described in Exhibit "A" hereto, upon the basis of the following Findings and Conclusions.

FINDINGS OF FACT

1. James and Wanita Thill are the owners of the real estate described in Exhibit "A".
2. The Thill parcel is non riparian, with a bluff heading down toward and a road and some buildings between it and the lakeshore and it has no legal access to the lake. The shortest distance by road to the lake from this parcel is approximately 2500 feet.
3. The Thill parcel is used for residential purposes by Mr. and Ms. Thill, which is consistent with its zoning. A house is located on the property and it has been landscaped toward the lake.
4. During a portion of the year, there is a view of the lake from the Thill property. Mr. Thill testified

that this is when he and his wife are out of state but that is a matter of personal preference, not related to the real estate, itself.

5. No use is made of Lake Altoona by either of the Thills.
6. The current assessed value of the Thill parcel is \$482,000, estimated fair market value of \$547,200 and that the fair market value at the time of the building of the Thill home in 1994 was between \$300,000 and \$320,000.
7. The parcel in question is in close proximity to the lake, as evidenced by testimony and Exhibit "1".
8. In accord with the exhibits concerning past, present and future lake district projects pertaining to rehabilitation and preservation of Lake Altoona by the Lake District, the Lake District has undertaken and is currently involved in projects which have and will help to prevent Lake Altoona from undergoing deterioration and either being filled in or degraded by sediment, fertilizers and other materials deleterious to the health of the lake.
9. Realtors submitted letters and affidavits on behalf of the petitioner to the effect that, in their opinions, the value of the Thill parcel was decreased by its inclusion in the Lake District; however, the Board relegates this evidence to just what it is: opinions and chooses to find that the Thill parcel has increased in value and that given the proximity of the parcel to the lake, its value is enhanced and will continue to be enhanced by actions of the Lake District in rehabilitating and protecting Lake Altoona.

CONCLUSIONS OF LAW

1. A petition for detachment of real estate from a lake district shall be determined upon the basis of § 33.33 (3), Wis. Stats., which allows that a parcel of real estate may be detached upon a finding that the parcel is not benefitted by continued inclusion in the lake district.
2. The term "benefit" as is used in § 33.33 (3), Wis. Stats., is not defined by the legislature.

According to Webster's New Collegiate Dictionary, it means: "something that promotes well being; advantage; useful aid; help."

3. The burden of persuasion is upon the owner seeking detachment of his or her parcel from the lake district.

4. Due primarily to the proximity of this parcel of property to the lake and the fact that a view can be had from it during a portion of the year and because the efforts of the Lake District toward rehabilitation and protection of Lake Altoona help to promote the value of the Thill parcel, it will be benefitted by continued inclusion in the Lake District.

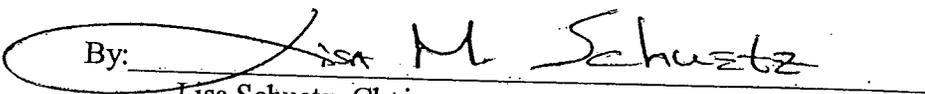
ORDER

That in accord with § 33.33 (3), Wis. Stats., the petition of James and Wanita Thill is hereby DENIED.

Dated this 21 day of DECEMBER, 2005.

**LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS**

By: _____


Lisa Schuetz, Chairperson

**LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS**

IN RE: Detachment Petition of
Richard and Roxanne Rollefson

**ORDER OF DENYING DETACHMENT
§33.33(3), Wis. Stats.**

Upon the basis of a Hearing held in the matter of the Detachment Petition submitted by Richard and Roxanne Rollefson, the Rollefsons being represented by Attorney Dean R. Dietrich of Ruder Ware, Wausau, Wisconsin, which hearing was held on November 17 and December 5, 2005, by the Lake Altoona Lake Rehabilitation District Board of Commissioners, and upon the basis of the testimony submitted during the course of said hearing and the exhibits submitted by the petitioner and others, the Board hereby denies the Detachment of the property owned by the said Richard and Roxanne Rollefson from the Lake District, which property is described in Exhibit "A" hereto, upon the basis of the following Findings and Conclusions.

FINDINGS OF FACT

1. Richard and Roxanne Rollefson are the owners of the real estate described in Exhibit "A".
2. The Rollefson parcel is non riparian, but is approximately 700 feet from the lakeshore and is four tenths of a mile by road from the Lake Altoona Park boat landing. There is a road between the Rollefson parcel and the lake.
3. The Rollefson parcel is used for residential purposes by Mr. and Ms. Rollefson, which is consistent with its zoning.
4. No legal access to the lake is attached to the Rollefson parcel.

5. During a portion of the year, there is a view of the lake from the Rollefson property.
6. No use is made of Lake Altoona by either of the Rollefsons.
7. Richard Rollefson acknowledged that if the lake were to become stagnant, it would be noticed from his property.
8. In accord with the exhibits concerning past, present and future lake district projects pertaining to rehabilitation and preservation of Lake Altoona by the Lake District, the Lake District has undertaken and is currently involved in projects which have and will help to prevent Lake Altoona from undergoing deterioration and either being filled in or degraded by sediment, fertilizers and other materials deleterious to the health of the lake.
9. Realtors submitted letters and affidavits on behalf of the petitioner to the effect that, in their opinions, the value of the Rollefson parcel was decreased by its inclusion in the Lake District; however, the Board relegates this evidence to just what it is: opinions and chooses to find that given the proximity of the parcel to the lake, its value is enhanced and will continue to be enhanced by actions of the Lake District in rehabilitating and protecting Lake Altoona.
10. The Rollefsons submitted a statement (Exhibit "42 ") and Richard Rollefson testified in support of their petition. The majority of the information included within said statement and in Mr. Rollefson's testimony consisted of their opinions as to why factors identified by the Board as criteria for consideration of a detachment petition were irrelevant or arbitrary or capricious, rather than presenting to the Board evidence in support of their petition.

CONCLUSIONS OF LAW

1. A petition for detachment of real estate from a lake district shall be determined upon the basis of § 33.33 (3), Wis. Stats., which allows that a parcel of real estate may be detached upon a finding that the parcel is not benefitted by continued inclusion in the lake district.

2. The term "benefit" as is used in § 33.33 (3), Wis. Stats., is not defined by the legislature. According to Webster's New Collegiate Dictionary, it means: "something that promotes well being; advantage; useful aid; help."
3. The burden of persuasion is upon the owner seeking detachment of his or her parcel from the lake district. The evidence and testimony submitted in support of the Rollefson petition consisted primarily of arguments as to why the criteria identified by the Lake Board for consideration were irrelevant or arbitrary and capricious, instead, of evidence as to why the Rollefson parcel is not benefitted by its continued inclusion in the Lake District.
4. In addition, due to the proximity of this parcel of property to the lake and the fact that a view can be had from it during a portion of the year and because the efforts of the Lake District toward rehabilitation and protection of Lake Altoona help to promote the value of the Rollefson parcel, it will be benefitted by continued inclusion in the Lake District.

ORDER

That in accord with § 33.33 (3), Wis. Stats., the petition of Richard and Roxanne Rollefson is hereby DENIED.

Dated this 21 day of DECEMBER, 2005.

**LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS**

By: _____

Lisa Schuetz, Chairperson

**LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS**

IN RE: Detachment Petition of
Westerberry Family Trust

**ORDER OF DENYING DETACHMENT
§33.33(3), Wis. Stats.**

Upon the basis of a Hearing held in the matter of the Detachment Petition submitted by the Westerberry Family Trust, which hearing was held on February 22 and 23, 2006, by the Lake Altoona Lake Rehabilitation District Board of Commissioners, and upon the basis of the testimony submitted during the course of said hearing and the exhibits submitted by the petitioner and others, the Board hereby denies the Detachment of the property owned by the said Westerberry Family Trust from the Lake District, which property is described in Exhibit "A" hereto, upon the basis of the following Findings and Conclusions.

FINDINGS OF FACT

1. The Westerberry Family Trust is the owner of the real estate described in Exhibit "A".
2. The Westerberry Family Trust parcel is non-riparian, situated along North Shore Drive, in the Town of Seymour. It is in close proximity to the lake, itself, no more than 150 feet distant from the shoreline of the lake, separated from it by other parcels of real estate which are undeveloped.
3. The Westerberry Family Trust parcel is used for residential purposes by the Westrate family, which is consistent with its zoning. At the time of its purchase by it in 1984, the Westerberry Family Trust parcel consisted of 15 acres of undeveloped land upon which the family built a house. Much of the land is undevelopable, being situated in a wetland or floodplain. A small, intermittent

creek, which seeps from a spring on property off site, flows through the property, and the Westrate family has dug a pond in a swampy area on the property.

4. No legal access to the lake is attached to the Westerberry Family Trust parcel. However, access to the lake via public facilities is available within reasonable walking and biking distance.

5. A partially obstructed view of the lake is available from the Westerberry Family Trust property.

6. David Westrate acknowledged that if the lake were to deteriorate and if it were to become odoriferous, it could detract from the value of his property but that in his opinion, he doubted that this would affect the Westerberry Family Trust use of its property.

7. In accord with the exhibits concerning past, present, and future lake district projects pertaining to rehabilitation and preservation of Lake Altoona by the Lake District, the Lake District has undertaken and is currently involved in projects which have and will help to prevent Lake Altoona from undergoing deterioration and either being filled in or degraded by sediment, fertilizers and other materials deleterious to the health of the lake.

8. David Westrate testified that in his opinion on behalf of the Trust, the Trust had no interest in the health or condition of Lake Altoona, nor do members of the Westrate family make use of the lake. When originally purchased, it was because it was wooded, the price was right, and it was outside of the city that the family was attracted to it, not its location adjoining Lake Altoona. He further testified that the noise of snowmobiles in winter is annoying and that McFaul Bay which adjoins the property in question was of questionable value. He also testified that 13.5% of the property tax bill went to support the Lake District and that it should be the people of the state at large

and not the owners of land situated adjoining lakes, such as Lake Altoona, who should pay for their upkeep.

9. Lake District rehabilitation projects, both in the past as well as in the present, include functions other than dredging alone. Limnological studies, water drainage studies and projects have been and are currently being entertained to assist in preserving Lake Altoona.

CONCLUSIONS OF LAW

1. A petition for detachment of real estate from a lake district shall be determined upon the basis of §33.33(3), Wis. Stats., which allows that a parcel of real estate may be detached upon a finding that the parcel is not benefitted by continued inclusion in the lake district.

2. The term "benefit" as is used in §33.33(3), Wis. Stats., is not defined by the legislature. According to Webster's New Collegiate Dictionary, it means: "something that promotes well being; advantage; useful aid; help."

3. The burden of persuasion is upon the owner seeking detachment of his or her parcel from the lake district. The evidence and testimony submitted in support of the Westerberry Family Trust petition concentrated on the concept of what the owners perceived of as being "fair" as and between its property and how it should be the state or the county and not individual land owners, such as it, who should bear the burden of financing lake improvement and rehabilitation projects.

4. Due to the proximity of this parcel of property to the lake and the fact that a view can be had from it and because the efforts of the Lake District toward rehabilitation and protection of Lake Altoona help to promote the value of the Westerberry Family Trust parcel, it will be benefitted by continued inclusion in the Lake District. The property consists mainly of wetland and floodplain, there is a pond on the property and an intermittent stream flows through it to the lake.

ORDER

That in accord with §33.33(3), Wis. Stats., the petition of the Westerberry Family Trust is hereby DENIED.

Dated this 15 day of March, 2006.

**LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS**

By: SA Lisa M. Schuetz
Lisa Schuetz, Chairperson

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**LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS**

IN RE: Detachment Petition of
David and Susan Rowe

**ORDER OF DENYING DETACHMENT
§33.33(3), Wis. Stats.**

Upon the basis of a Hearing held in the matter of the Detachment Petition submitted by David and Susan Rowe which hearing was held on February 22 and 23, 2006, by the Lake Altoona Lake Rehabilitation District Board of Commissioners, and upon the basis of the testimony submitted during the course of said hearing and the exhibits submitted by the petitioner and others, the Board hereby denies the Detachment of the property owned by David and Susan Rowe from the Lake District, which property is described in Exhibit "A" hereto, upon the basis of the following Findings and Conclusions.

FINDINGS OF FACT

1. David and Susan Rowe are the owners of the real estate described in Exhibit "A".
2. The Rowe parcel is non-riparian, situated along Lake Road, in the City of Altoona.

It is in close proximity to the lake.

3. The Rowe parcel is used for residential purposes by the Rowses, which is consistent with its zoning. At the time of its purchase approximately 22 years ago, the Rowe parcel was undeveloped and they built their house upon it. David Rowe testified that there were quite a few undeveloped lots in the vicinity of their property at that time and that they had the opportunity to purchase a lake lot but chose not to do so. David Rowe also testified that the Rowses make use of

a family cottage on Round Lake and that they have no desire or need to make use of Lake Altoona as a water-based recreational resource.

4. No legal access to the lake is attached to the Rowe parcel. However, access to the lake via public facilities is available within reasonable walking and biking distance.

5. A view of the lake is available from the Rowe property. Each owner noted that their view is unobstructed and that they do enjoy the view.

6. David Rowe acknowledged that if the lake were to deteriorate and if it were to become odoriferous, it would detract from the value of his property.

7. In accord with the exhibits concerning past, present, and future lake district projects pertaining to rehabilitation and preservation of Lake Altoona by the Lake District, the Lake District has undertaken and is currently involved in projects which have and will help to prevent Lake Altoona from undergoing deterioration and either being filled in or degraded by sediment, fertilizers and other materials deleterious to the health of the lake.

8. David Rowe testified that, in his opinion, the action of the Lake Board in deciding to modify the Lake District boundaries with reference to streets or roads on either side of the lake lacked a rational basis and that his property received negligible benefits from the dredging activities engaged in by the District.

9. Lake District rehabilitation projects, both in the past as well as in the present, include functions other than dredging alone. Limnological studies, water drainage studies and projects have been and are currently being entertained to assist in preserving Lake Altoona.

CONCLUSIONS OF LAW

1. A petition for detachment of real estate from a lake district shall be determined upon the basis of §33.33(3), Wis. Stats., which allows that a parcel of real estate may be detached upon a finding that the parcel is not benefitted by continued inclusion in the lake district.

2. The term "benefit" as is used in §33.33(3), Wis. Stats., is not defined by the legislature. According to Webster's New Collegiate Dictionary, it means: "something that promotes well being; advantage; useful aid; help."

3. The burden of persuasion is upon the owner seeking detachment of his or her parcel from the lake district. The evidence and testimony submitted in support of the Rowe petition concentrated on the concept of what the owners perceived of as being "fair" as and between their property and properties owned by other persons and which are not currently in the Lake District. In addition, it is the responsibility of the Lake District Board under §33.33(3), Wis. Stats., and the recent Donaldson Supreme Court decision to decide whether or not this particular property, owned by the Rowes, and not other properties are benefitted by or would be benefitted by Lake District functions if they are or were included in the Lake District.

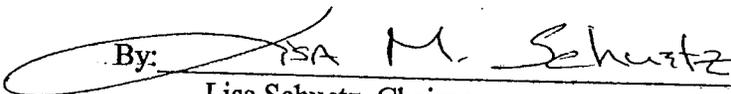
4. Due to the proximity of this parcel of property to the lake and the fact that a view can be had from it and because the efforts of the Lake District toward rehabilitation and protection of Lake Altoona help to promote the value of the Rowe parcel, it will be benefitted by continued inclusion in the Lake District.

ORDER

That in accord with §33.33(3), Wis. Stats., the petition of David and Susan Rowe is hereby
DENIED.

Dated this 15 day of March, 2006.

**LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS**

By: 

Lisa Schuetz, Chairperson

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272 Wis.2d 146
Supreme Court of Wisconsin.

Arthur T. DONALDSON,
Plaintiff–Respondent–Petitioner,
v.
BOARD OF COMMISSIONERS
OF ROCK–KOSHKONONG LAKE
DISTRICT, Defendant–Appellant. †

No. 01–3396.

|
Argued Oct. 8, 2003.

|
Decided June 9, 2004.

Synopsis

Background: Owner of property in public inland lake protection and rehabilitation district sought judicial review of district board's decision to deny his petition to detach his land from district. The Circuit Court, Rock County, James E. Welker, J., reversed board's decision, and board appealed. The Court of Appeals, 260 Wis.2d 238, 659 N.W.2d 66, reversed. Owner petitioned for review.

Holdings: The Supreme Court, David T. Prosser, J., held that:

[1] board failed to apply correct standard to petition to detach property;

[2] board's decision was arbitrary and unreasonable; and

[3] evidence was insufficient to support board's decision.

Court of Appeals reversed, and case remanded to circuit court.

N. Patrick Crooks, J., dissented and filed opinion in which Shirley S. Abrahamson, C.J., and Ann Walsh Bradley, J., joined.

Attorneys and Law Firms

**764 *151 For the plaintiff-respondent-petitioner there were briefs by David C. Moore and Nowlan & Mouat LLP, Janesville, and oral argument by David C. Moore.

*152 For the defendant-appellant there was a brief by William P. O'Connor, Mary Beth Peranteau and Wheeler, Van Sickle & Anderson, S.C., Madison, and oral argument by William P. O'Connor.

An amicus brief was filed by William J. Mulligan and Davis & Kuelthau, S.C., Milwaukee, on behalf of The Wisconsin Association of Lakes, Inc.

Opinion

¶ 1 DAVID T. PROSSER, J.

Arthur T. Donaldson (Donaldson) seeks review of a published decision of the court of appeals that reversed an order detaching Donaldson's two parcels of land from the Rock–Koshkonong Lake District (Lake District).¹ The Lake District is a public inland lake protection and rehabilitation district (lake district) under **765 Wis. Stat. ch. 33 (2001–02).² This review requires us to (1) interpret Wis. Stat. § 33.33(3), which authorizes a property owner to seek detachment of “territory” from a lake district; and (2) address the scope of a circuit court's authority to review a lake district board's rejection of a detachment petition.

¶ 2 Donaldson asks that we reinstate the decision of the circuit court, which detached his “territory” from the Lake District on grounds that the evidence presented at the detachment hearing did not support a finding that Donaldson's two parcels were benefited by continued inclusion in the District. Conversely, the Board of Commissioners of the Rock–Koshkonong Lake District (the Lake District Board) asks that we affirm the court of appeals decision that a lake district board *153 may detach property only if it finds there has been a change in circumstances since the formation of the district.

¶ 3 We conclude that Wis. Stat. § 33.33(3) accords a statutory right to petition the lake district board for an individual determination of whether specific “territory” is “benefited” by continued inclusion in the lake district.³ This determination is separate and distinct from the legislative decision to create the district. There is no inherent conflict between a county board's decision to create a district with certain property in it and a lake district board's decision to detach a parcel from the district, because the lake district board's decision must address present circumstances, taking into account the lake district's past, present, and future activities in relation to that property. We therefore reject a

rule that a petitioner must always demonstrate a change in circumstances before a lake district board is authorized to detach property.

¶ 4 We further conclude that a lake district board performs a legislative function when it considers whether to detach territory under § 33.33(3). Accordingly, a lake district board's detachment decision is presumed correct, and judicial review is limited to inquiring (1) whether the lake district board kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, *154 oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that the board might reasonably make the determination in question. When the board fails this review, the circuit court should remand the petition to the lake district board for action consistent with its decision.

¶ 5 Accordingly, we reverse the decision of the court of appeals and remand this case to the circuit court.

I. FACTS AND PROCEDURAL HISTORY

¶ 6 The facts and procedural history are not in dispute. On June 10, 1999, the Rock County Board of Supervisors created the Rock-Koshkonong Lake District, consisting of land surrounding Lake Koshkonong and a portion of the Rock River. The Lake District consists of more than 4,000 parcels of land located within five towns in three counties (Dane, Jefferson, **766 and Rock).⁴ It describes itself as "the largest lake district in the State of Wisconsin." See www.rkld.org (Rock-Koshkonong Lake District website) (last modified April 5, 2004). When it created the Lake District, the Rock County Board found that "[t]he property included in the district will be benefited by the district's establishment." This is a prerequisite finding required by statute. See Wis. Stat. § 33.26(3).⁵

*155 ¶ 7 The Lake District includes two parcels of land owned by Donaldson. One parcel is located about one mile north of the Rock River, the other about one-half mile south of the Rock River. Donaldson's attorney filed a timely letter objecting to the formation of the lake district, as permitted by statute,⁶ but did not seek judicial review after the district was formed.

¶ 8 On January 4, 2001, Donaldson petitioned the Lake District Board for detachment of his two properties.⁷ On February 13, 2001, the Lake District Board held a public hearing to review his petition. A *156 transcript of the Board's evidentiary hearing was made part of the circuit court record.

¶ 9 At the hearing, Donaldson testified that his two parcels are not adjacent to any body of water, do not have access rights to Lake Koshkonong or the Rock River, and are not adjacent to any public access to those bodies of water. On the contrary, his parcels consist of agricultural land adjacent to an interstate highway. The only improvements on the land are three highway signs unrelated to Lake Koshkonong or the Rock River. Donaldson also testified that he did not believe the value of his land was enhanced by its proximity to Lake Koshkonong. He acknowledged that his property had not changed since the formation of the Lake District in 1999.

¶ 10 The only other person to testify was Steve Hjort, a biologist who serves as a consultant to the Lake District. He asserted **767 that Donaldson's parcels are within the lower Koshkonong Creek sub-watershed, which is part of the Rock River watershed, meaning that surface water from his property drains into the Rock River. When asked about the boundaries of the Rock River watershed, Hjort explained that the watershed extends well beyond the established boundary of the Lake District, and that all land in Wisconsin is in some watershed. Hjort also stated that, based on the map he had in front of him, Donaldson's northern property was approximately one and one-half miles from the lake or river and two miles from the nearest public access site; the southern parcel was approximately one-half mile from the lake or river and one mile from the nearest public access site.

¶ 11 Although he did not testify, one of the Board commissioners, Jim Folk, took photographs of Donaldson's southern parcel to demonstrate that the *157 parcel was within the sightline of the Rock River. Folk's photos were admitted into evidence. Donaldson had testified that Lake Koshkonong was not visible from either of his parcels.

¶ 12 The Lake District Board continued the matter until its next meeting on March 13, 2001. At that meeting Buck Sweeney, a member of the Lake District Board who had not been present at the previous hearing, moved to deny the petition for detachment for the following reasons: (1) both tracts were within the original boundary of the district; (2) the Rock County Board's Resolution included a finding that

the property within the Lake District will be benefited by the creation of the Lake District; (3) there was no evidence that there was a change in circumstances inconsistent with the initial finding that these tracts benefit from their inclusion in the Lake District; (4) both tracts are within the Rock River watershed and sub-watershed areas; (5) both tracts are located in near proximity to Lake Koshkonong and the portion of the Rock River within the Lake District; (6) although neither parcel is riparian, both tracts are located close to public boat launches; (7) the southerly tract has a direct view of the Rock River; (8) the value of both tracts will be enhanced if the water quality and recreational value of Lake Koshkonong and associated Rock River are improved and will be diminished if the lake or river were further degraded or if the Indianford Dam were removed; and (9) therefore, the parcels are benefited by continued inclusion in the Lake District.

¶ 13 The Board voted unanimously in favor of Sweeney's motion to deny Donaldson's petition.

¶ 14 Donaldson appealed to the Rock County Circuit Court, James E. Welker, Judge. This appeal was taken pursuant to Wis. Stat. §§ 33.33(3) and 33.26(7). *158 The defendant Board moved to dismiss the action on grounds that § 33.26(7) requires that a verified petition be made within 30 days of a lake district board's decision on detachment, and Donaldson's complaint, though within the 30-day period, was not verified. Shortly thereafter, Donaldson filed an amended complaint complying with the verification requirements.

¶ 15 Both Donaldson and the Lake District Board moved for summary judgment, and the circuit court held a hearing on June 13, 2001. On November 7, 2001, the circuit court granted judgment in favor of Donaldson and detached Donaldson's properties from the Lake District.

¶ 16 The Lake District Board appealed, contending that the circuit court erred in rejecting its argument that detachment requires a change in circumstances. The court of appeals agreed, reversing and remanding the matter for an order affirming the Lake District Board's decision to deny **768 the petition. *Donaldson v. Bd. of Comm'rs of Rock-Koshkonong Lake Dist.*, 2003 WI App 26, ¶ 22, 260 Wis.2d 238, 659 N.W.2d 66.

¶ 17 Because both parties treated Donaldson's action in circuit court as a request for certiorari review, the court of appeals employed the standard utilized in statutory certiorari cases.

Id., ¶ 10. Accordingly, the court of appeals presumed that the Lake District Board's decision was correct and limited its inquiry to "whether: (1) the board kept within its jurisdiction; (2) the board proceeded on a correct theory of law; (3) the board's action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) the evidence was such that the board might reasonably make the order or determination in question." *Id.* *159 (quoting *Nielsen v. Waukesha County Bd. of Supervisors*, 178 Wis.2d 498, 511, 504 N.W.2d 621 (Ct.App.1993)).

¶ 18 In fact, the court of appeals focused exclusively on the second inquiry: whether the board proceeded on a correct theory of law. *Id.* It noted that the word "benefited" in § 33.26(3), governing the creation of lake districts, and the word "benefited" in § 33.33(3), the detachment provision, carry the same meaning. *Id.*, ¶ 12, 504 N.W.2d 621. The court of appeals reasoned that the Rock County Board had determined that Donaldson's property "benefited" by including it in the Lake District when it created the District, *id.*, ¶ 20, 504 N.W.2d 621, and Donaldson did not seek judicial review of that decision. In effect, then, the Lake District Board would be allowing Donaldson to circumvent the 30-day time period for appeal if it permitted detachment of his property without requiring him to show a change in circumstances. Thus, the court of appeals concluded that the Lake District Board applied the correct theory of law when it denied Donaldson's petition for detachment, inasmuch as Donaldson himself conceded that no circumstances had changed since the creation of the district. *Id.*, ¶¶ 20-21, 504 N.W.2d 621.

II. ANALYSIS

A. Standard of Review

[1] [2] [3] [4] [5] ¶ 19 This case requires us to interpret and harmonize the provisions of Chapter 33. Statutory interpretation is a question of law that we review de novo. *Tri-Tech Corp. v. Americomp Serv.*, 2002 WI 88, ¶ 19, 254 Wis.2d 418, 646 N.W.2d 822. The purpose of statutory interpretation is to determine what a statute *160 means so that it may be given the full, proper, and intended effect. *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶ 44, 271 Wis.2d 633, 681 N.W.2d 110. We look first to the language of the statute. *N.E.M. v. Strigel*, 208 Wis.2d 1, 7, 559 N.W.2d 256 (1997). If the language is ambiguous, even after examining such intrinsic factors as scope and purpose, we may consult extrinsic sources, such as legislative history, in an effort

to divine legislative intent. *Kalal*, 271 Wis.2d 633, ¶ 42. Differing interpretations of a statute do not necessarily create ambiguity, but equally sensible interpretations of a word or phrase indicate a statute's ability to support more than one meaning. *State ex rel. Angela M.W. v. Kruzicki*, 209 Wis.2d 112, 122, 561 N.W.2d 729 (1997). "In construing statutes that are seemingly in conflict, it is our duty to attempt to harmonize them, if it is possible, in a way which will give each full force and effect." *City of Milwaukee v. Kilgore*, 193 Wis.2d 168, 184, 532 N.W.2d 690 (1995).

¶ 20 In this case, it is not clear whether the word "benefited" is intended to carry the same meaning in Wis. Stat. §§ 33.001, 33.26(1) and (3), and 33.33(3); see also § 33.32. It is also uncertain what kind of **769 review is intended in §§ 33.26(7) and 33.33(3). Consequently, we examine both intrinsic and extrinsic sources to help us construe the statute.

B. Lake District Powers

¶ 21 In 1974 the legislature created Chapter 33 of the statutes to afford additional protection to inland lakes. Ch. 301, Laws of 1973. The legislature declared that environmental values, wildlife, public rights in navigable waters, and the public welfare are threatened by the deterioration of public lakes. Wis. Stat. § 33.001. It found that protection and rehabilitation of public *161 inland lakes are in the best interest of the citizens as a whole and that the public welfare will be "benefited" thereby. *Id.* It noted that lakes form an important basis for the state's recreation industry and that increasing recreational use of public waters justifies state action to enhance and restore the potential of the state's inland lakes. *Id.* Therefore, the legislature concluded, "it is necessary to embark upon a program of lake protection and rehabilitation, to authorize a conjunctive state and local program of lake protection and rehabilitation to fulfill the positive duty of the state as trustee of navigable waters, and protect environmental values." Wis. Stat. § 33.001(2)(a).

¶ 22 In addition, the legislature found that local "districts should be formed by persons directly affected by the deteriorated condition of inland waters and willing to assist financially, or through other means, in remedying lake problems." Wis. Stat. § 33.001(2)(b). These lake districts are a significant component of Chapter 33's manifold approach to addressing the legislature's inland lakes objectives. They are corporate bodies with the powers of a municipal corporation, Wis. Stat. § 33.26(3), and each district may undertake "a program of lake protection and rehabilitation of a lake or parts thereof." Wis. Stat. § 33.21. The provisions governing

the creation and activities of lake districts are designed to enable these special purpose districts to coexist among more traditional local governmental units.

¶ 23 A lake district's powers are set out in Wis. Stat. § 33.22. They include the power to sue and be sued, make contracts, purchase, lease or otherwise acquire property, disburse money, contract debt and do any other acts necessary to carry out a program of lake protection and rehabilitation. Wis. Stat. § 33.22(1). The *162 district may also create, operate and maintain a water safety patrol unit, enhance the recreational uses of the lake, including recreational boating facilities, and assume sanitary district powers. Wis. Stat. §§ 33.22(2m), 33.22(4m), and 33.22(3) and (4).

¶ 24 To finance these operations, the lake district has power to impose taxes and special assessments. First, the annual meeting may levy a uniform tax on all taxable property within the district. This tax to fund operations may not exceed a rate of 2.5 mills (\$2.50 per thousand) of equalized valuation. Wis. Stat. § 33.30(4)(a).⁸

**770 ¶ 25 Second, because a lake district may borrow money, the district "shall levy an annual, irrevocable tax to pay the principal and interest" on its indebtedness. "The district shall levy the tax without limitation as to rate or amount on all taxable property within the district." Wis. Stat. § 33.31(3).

¶ 26 Third, the board of commissioners may impose special assessments "for the purpose of carrying out district protection and rehabilitation projects." Wis. Stat. § 33.32(1). After determining the entire cost of the *163 work to be done, the lake district board must apportion a special assessment "on a reasonable basis." *Id.* "In apportioning the special assessment, the commissioners shall examine each parcel and determine the benefits to each parcel from the project, considering such factors as size, proximity to the lake and present and potential use of the parcel, including applicable zoning regulations." Wis. Stat. § 33.32(1)(b) (emphasis added).

¶ 27 The potential scope of a lake district's operations, juxtaposed with the lake district's extensive taxing authority, may cause non-riparian property owners to be wary of large property tax bills and assessments. Special assessments should be tailored to reflect actual benefit to individual properties, but taxes to cover a lake district's indebtedness will be taxed at the same uniform rate, irrespective of

whether properties are choice riparian or marginal non-riparian parcels.

¶ 28 At oral argument, the parties discussed the tensions that sometimes exist among owners of property within a lake district. Some riparian property owners favor high water levels, in part to promote recreation that will benefit their property; some riparian property owners favor lower water levels, perhaps because they have less interest in boating; and some property owners prefer to return a lake to its natural condition by removing any existing dam. When tensions exist within a lake district, factions may struggle to control the elected board to influence the policies and expenditures of the lake district. Non-riparians may watch these struggles, almost as bystanders, understanding that when elephants fight, the grass gets trampled.

¶ 29 In this case, there has been discussion about the Lake District's potential role in acquiring, operating, and maintaining the Indianford Dam, which is *164 presently owned by Rock County. See David W. Marcouiller, et al., University of Wisconsin—Extension, *Assessing Potential Economic and Ecological Impacts of Removing the Indianford Dam* 15 (Dec. 8, 1999); James E. Welker, Circuit Judge, Memorandum Decision 1 (Nov. 7, 2001) (“The impetus for the creation of the District was the potential for the removal of a small dam at Indianford.”).

¶ 30 With this in mind, Donaldson petitioned to have his two properties removed from the District. He objected to the added layer of taxation that comes from being included in the Lake District, asserting that his properties are not benefited by the District because neither property is riparian or enjoys private access rights to the lake or river. He therefore sees no point in subsidizing activities that he contends serve only to benefit the Lake District's riparian owners.

¶ 31 A lake district board must consider a detachment petition and may detach property “upon a finding that such territory is not benefited by continued inclusion in the district.” Wis. Stat. § 33.33(3). In this case, after a hearing, the Lake District Board turned down Donaldson's petition.

¶ 32 Section 33.33(3) also provides for “appeals of the commissioners' decision,” **771 which may be taken under § 33.26(7). Section 33.26(7) provides: “Any person aggrieved by the action of the board may petition the circuit court for judicial review. A verified petition shall be presented to the court,” specifying the grounds upon which the appeal

is based. Wis. Stat. § 33.26(7). Donaldson availed himself of this right. His ground for appealing was that the Lake District Board could not have reached the decision to deny his petition based on the evidence it received. The circuit court agreed and ordered Donaldson's property detached. As noted, the *165 court of appeals reversed, reasoning that Chapter 33's statutory scheme required a change in circumstances, a position strongly espoused by the Lake District Board. *Donaldson*, 260 Wis.2d 238, ¶ 21, 659 N.W.2d 66. Because Donaldson conceded that the overall circumstances had not changed since his property was included in the District, the “petition for detachment was properly denied on the basis that he failed to show a change in circumstance.” *Id.*

C. History of Inland Lakes Legislation

¶ 33 The 1974 legislation to promote the protection of public inland lakes grew out of a study conducted by the Legislative Council's Natural Resources Committee in 1972. The drafting file for the Legislative Council's bill, 1973 Assembly Bill 766,⁹ makes clear that the drafters used existing law on town sanitary districts as the model for the creation of lake districts. The bill went through seven drafts before it was introduced, however, and these drafts reveal an evolution in concerns about protections for property owners and they show how the lakes bill differed from the sanitary district law.

¶ 34 To illustrate, the first draft of the lakes bill limited the land in the lake district to “frontage” land. It defined “frontage” as “lands fronting on a lake, having a direct access to the lake via artificial watercourses or having rights of access running with the lands.” LRB–170/1:4. The explanation provided in the text of the draft stated: “The definition of ‘frontage’ is used in delimiting those lands in local lake renovation districts. It includes those lands having direct private access to *166 lakes; presumably, these lands will be specially benefited by any lake renovation project, and thus should directly bear part of the financial burden.” LRB–170/1:4.

¶ 35 In this first draft, only persons owning frontage could petition to establish a lake district. LRB–170/1:6. An explanatory note read: “Governmental jurisdictions are included as eligible petitioners, since frontage owned by them will both be assessed for and benefited by reclamation activities undertaken by the district.” In the bill's section on special assessments, the lake district commissioners were directed to “severally and separately consider each parcel of frontage therein and determine the benefits to each parcel

and make assessments thereon.” Any owner of a parcel of frontage who “feels aggrieved” by the assessment was authorized to “appeal” to the circuit court. “Such appeal shall be tried and determined in the same manner as cases originally commenced in said court.”

¶ 36 In the first draft, there was no provision for a landowner to seek review of the county board's decision to include a parcel of frontage property in the lake district and no provision for a landowner to seek detachment of frontage property from the district.

¶ 37 By the third draft, the bill contained a provision permitting any person aggrieved by the county board's decision **772 to create the lake district to petition the court for judicial review. LRB-170/3-10. The third draft still contained the delimiting language on “frontage.”

¶ 38 The fourth draft retained the limitation to “frontage” and added the following explanation:

The “frontage” definition also includes lands having direct access via natural streams flowing into or out of a lake. Determining whether any particular lands in *167 this class should be included in a district because of *direct* benefit is a question of fact, and is reserved to the county board for determination....

LRB-170/4:7 (emphasis added).

¶ 39 The fifth draft dropped both the definition of and limitation to “frontage” land but added a provision on detachment, linking it to the appeal provision for establishment of the district. LRB 170/5:20. The draft also eliminated the explanatory note affirming the county board's broad fact-finding authority in creating a lake district.

¶ 40 When the bill was ultimately introduced, the explanatory note following the bill's section on “Merger, Annexation, Detachment” read:

[The section] [p]rovides means of altering district boundaries. Merger is done by common consent of the governing bodies and members of both districts. Annexation proposals are measured against the same standards

used for establishing the district, and are similarly appealable. Detachment proposals are decided upon the basis of whether the territory proposed for detachment is benefited by continued inclusion in the district.

LRB 170/7:29-30.

¶ 41 Although the lakes bill received extensive attention prior to its introduction, it remained controversial. Its legislative history after introduction includes 5 Substitute Amendments and 36 simple Amendments. See Legislative Council, *Digest of Council Bills in the 1973 Legislature* 65 (May, 1975). We see nothing in the legislative history of the statute that dictates a requirement that a property owner prove a change in circumstances to qualify for detachment. On the contrary, the detachment procedure assures that an aggrieved *168 property owner will be able to secure an individual determination whether specific property is benefited.

D. The Delegation of Legislative Authority

¶ 42 The Lake District Board contends that the creation of a lake district is an exercise of legislative power by a county board, and a decision on detachment is an exercise of legislative power by a lake district board. The Board emphasizes that an exercise of legislative power is subject to very limited judicial review. At a minimum, the Board argues, a property owner seeking a review of a decision on detachment must show a change in circumstances since the lake district was formed.

¶ 43 Because the statutes on town sanitary districts were used as a model for the lake district legislation, we believe that cases interpreting the sanitary district statutes are helpful in interpreting Chapter 33.

¶ 44 In *Fort Howard Paper Co. v. Fox River Heights Sanitary District*, this court reviewed a challenge to the creation of a town sanitary district. 250 Wis. 145, 26 N.W.2d 661 (1947). The standards then in place for a town to create a sanitary district resemble the conditions necessary for a county board to create a lake district.¹⁰ **773 Both require, among other things, that the appropriate body find that “the property to be *169 included in the district will be benefited by the establishment thereof.” Wis. Stat. §§ 60.303(3) (1945), 33.26(3).¹¹ The focus in *Fort Howard* was on the scope of a circuit court's power to review the town board's determination

that Fort Howard's property benefited from the establishment of the town sanitary district. The legislature had included a provision for an aggrieved party to bring an action in circuit court. Wis. Stat. § 60.304 (1945).¹² When Fort Howard brought such an action, the circuit court tried the issue as if there had been no prior decision by the town board, and *170 determined that Fort Howard's property did not benefit from being in the town sanitary district and excluded it from the district. *Fort Howard*, 250 Wis. at 149, 26 N.W.2d 661.

¶ 45 On appeal, this court concluded that the power to establish a town sanitary district had been delegated to the town board by the legislature. *Id.* at 149–50, 26 N.W.2d 661. Thus, the circuit court erred by reviewing *de novo* and under its own standards whether the property would “benefit.” *Id.* at 151, 26 N.W.2d 661. We said that a court's powers of review were quite limited. *Id.* at 150, 26 N.W.2d 661.

¶ 46 The *Fort Howard* decision requires close analysis. The statute in place at the time stated that “if it shall appear to the town board after consideration of all objections, that ... the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of such district, and the property to be included in the district will be benefited by the establishment thereof,” the board shall declare its findings, establish the boundaries, and declare the district organized. Wis. Stat. § 60.303(3) (1945).

¶ 47 The right of a property owner thereafter to appeal the board's decision to **774 circuit court was limited. Wis. Stat. § 60.304 (1945). The statute authorized an action “*to set aside* the action of the board” (emphasis added). The statute went on: “Unless action is so taken [within the required time period], the determination by the town board shall be conclusive.” *Id.*

¶ 48 As a general proposition, we noted that “the court may not exercise legislative power.” *Fort Howard*, 250 Wis. at 150, 26 N.W.2d 661.

*171 The question here is to what extent has the court power to review the action of a body exercising legislative power. By sec. 60.301, Stats., the legislature delegated to the town board the power to establish a town sanitary district. The power thus delegated to the town board being

legislative in its character, cannot be exercised by a court.

Id.

¶ 49 The court then appeared to step back somewhat, saying that “*unless otherwise provided by statute*,” the power of the court “is limited in the review of legislative orders to inquire as to:”

(1) the validity of the statute under which the legislative body acts; (2) whether the legislative body proceeded in accordance with the provisions of law and within its jurisdiction; (3) whether the legislative body acted arbitrarily, capriciously or oppressively. If the town board acted without evidence sufficient to support its findings it acted arbitrarily.

Id. at 150, 26 N.W.2d 661 (emphasis added).

¶ 50 Did the statute's reference to the town board's determination that “the property to be included in the district will be benefited by the establishment thereof,” imply additional review powers for a court? Not in that case, the court said. The statute did not require the town board to keep a record of its proceedings. *Id.* “In the absence of such a record, it must be presumed that the town board acted upon sufficient evidence to sustain its findings as there is nothing in the record to indicate the contrary.” *Id.* at 150–51, 26 N.W.2d 661. The court further explained that the town was not expected to focus on the benefit to individual properties:

The statute does not provide that if any piece or parcel of land included within the boundaries of the proposed district shall not be benefited, the district shall not be *172 organized. If the town board finds that the property within the boundaries of the proposed district as a whole will be benefited then the district is to be organized.... If all the property within the boundaries of the proposed district is in the watershed and the proposed improvement may serve it, then the property of the district as a whole is benefited and the town board if it makes the other

necessary finding may organize the district. The organization of a sanitary sewer district is in the interest of the public health. Such a district cannot be organized unless the town board finds from the evidence that the public health, comfort, convenience, necessity, and public welfare will be promoted thereby. That is the benefit that is meant by the statute.

Id. at 152, 26 N.W.2d 661.

¶ 51 The *Fort Howard* case stands in part for the proposition that courts are prohibited from substituting judicial judgment as to good public policy for legislative judgment. *Id.* at 150, 26 N.W.2d 661. In the *Fort Howard* circumstances, “Fixing the limits of the proposed district is within the discretion of the town board, which discretion the court has no power to review. The order must be set aside or **775 affirmed in toto.” *Id.* at 151, 26 N.W.2d 661.

[6] [7] [8] ¶ 52 As a general principle, whether a particular unit of government should be created involves the best interest of the community and is therefore a matter of “public policy and statecraft.” See, e.g., *In re Village of North Milwaukee*, 93 Wis. 616, 624, 67 N.W. 1033 (1896); see also *Town of Pleasant Prairie, Kenosha County v. Department of Local Affairs and Development*, 113 Wis.2d 327, 343, 334 N.W.2d 893 (1983); *Town of Beloit v. City of Beloit*, 37 Wis.2d 637, 646–47, 155 N.W.2d 633 (1968); *Scharping v. Johnson*, 32 Wis.2d 383, 388, 145 N.W.2d 691 (1966) (“The *173 creation of municipal corporations is peculiarly within the province of the legislature.”). As we have stated in the parallel context of municipal annexation:

What is “desirable,” or “advisable” or “ought to be” is a question of policy, not a question of fact. What is “necessary,” or what is “in the best interest” is not a fact and its determination by the judiciary is an exercise of legislative power when each involves political considerations and reasons why there should or should not be an annexation. This is the general and universal rule which sharply draws the differentiating line between legislative power and judicial power and by which the validity of the

delegation of functions to the judiciary by the legislature is determined.

City of Fond du Lac v. Miller, 42 Wis.2d 323, 329, 166 N.W.2d 225 (1969), (citing *Town of Beloit*, 37 Wis.2d at 644, 155 N.W.2d 633).

[9] ¶ 53 We are constrained to believe that the same principles apply when a court reviews the action of a county board in creating a lake district. The dynamics of lake district creation are such that a county board is likely to look at the big picture, that is, whether the proposed lake district will serve the public interest as a whole and whether the properties to be included in the district will be benefited as a whole.¹³ In these circumstances, *174 judicial review is almost necessarily limited to whether the county board followed proper procedures in establishing the district and whether the board's action with respect to an individual property or group of properties was so arbitrary, oppressive, or unreasonable that it jumps out to the observer without additional evidence.¹⁴

¶ 54 Of course, a property owner who does not wish a certain parcel to be included in a proposed lake district may be able to persuade the county board to consider that parcel individually and remove it from the district, or to consider the parcel individually and provide an explanation of why that parcel is benefited. If the latter determination is made, it will be very hard to challenge on appeal, and hard to challenge in a subsequent detachment petition, absent a change in circumstances.

**776 E. Tension Between Lake District Formation and Detachment Procedures

¶ 55 We are concerned in this case with the Lake District Board's determination not to detach property, not the Rock County Board's decision to form the District. Both parties admit to a certain tension in the statutes because each board, at different points in time, decides whether property is “benefited” from inclusion in the lake district. Our task is to resolve the tension between language in Wis. Stat. § 33.26(3), governing *175 the formation of lake districts, and language in § 33.33(3), authorizing the detachment of territory from lake districts.

[10] ¶ 56 We agree with the Lake District Board that the decision to detach territory from a lake district is, like the decision to form a lake district, an exercise in legislative

power.¹⁵ Consequently, judicial review is circumscribed. Nonetheless, there are important differences between judicial review of the creation decision by a county board and judicial review of the detachment determination by the lake district board.

¶ 57 First, the 1974 lake district legislation created a detachment mechanism that was not present in the town sanitary district law.¹⁶ There was a reason for doing so. As we observed in ¶ 39 above, the detachment *176 procedure appeared in the draft legislation at the same time the language limiting the property that could be included in the district was taken out. The term “frontage” may have been viewed as too limiting, but its removal effectively erased all limits. Thus, we believe it is a fair inference that the detachment procedure was designed as a necessary safeguard for property owners—to discourage overreaching by the proponents of a lake district and to assure that an aggrieved property owner would be able to secure an individual determination of whether a specific parcel is benefited.

¶ 58 Second, the “benefited” language in § 33.26(3) is not the same as the “benefited” language in § 33.33(3). A county board determines “that the property to be included in the district *will be benefited* by the establishment” of the district. Wis. Stat. § 33.26(3) (emphasis added). This finding is both general and predictive. In the absence of an individualized determination, a county board is making a rough approximation of benefit to all properties in the district as the county board looks to the future. By contrast, a lake district board must decide whether “*such territory is not benefited by continued inclusion in the district.*” Wis. Stat. § 33.33(3) (emphasis added).¹⁷ This determination *177 requires **777 an individualized evaluation of property under present circumstances.¹⁸ A lake district board may utilize hindsight and foresight as it makes its fact-based detachment determination on an individual parcel. The commissioners are aware of both past and present activities of the lake district, and, as such, can intelligently ascertain whether a property initially included in the district is currently benefited and will continue to benefit from the district. The district board is uniquely situated to assess whether activities slated for future implementation will benefit a particular piece of property.

¶ 59 By closely examining the two statutes, we conclude that it is not always necessary for the petitioner in a detachment proceeding to prove that there has been a change

in circumstances. When there has been no individualized determination of benefit to property by the county board, there is a presumption that the board made a reasonable decision, but this presumption is not *conclusive* in a future detachment proceeding. In other words, the county board's decision normally does not settle the issue of benefit to individual property. As noted above in ¶ 40, the Legislative Council described the distinction between the test for annexation to a lake district and the test for detachment from a lake district: “Annexation proposals are measured against the *same standards used for establishing* *178 *the district*, and are similarly appealable. Detachment proposals are decided upon the basis of whether the territory proposed for detachment is benefited by continued inclusion in the district.” LRB 170/7:29–30 (emphasis added). The framers of the legislation explicitly recognized a distinction between one determination and the other. Consequently, a lake district board's duty to render an individualized determination as to present benefit to a specific parcel cannot be satisfied by relying solely on the decision previously made by the county board, unless the county board made an individualized determination *and* nothing has changed.

¶ 60 At oral argument, counsel for the Lake District asserted that the legislature has imposed no standards at all to guide a lake district as it exercises legislative power on the issue of detachment. This is not correct. The legislature's findings and declaration of intent are not irrelevant. They include statements (1) that “the protection and rehabilitation of the public inland lakes of this state are in the best interest of the citizens of this state; [and] the public health and welfare will be *benefited* thereby,” and (2) lake “districts should be formed by persons *directly* affected by the deteriorated condition of inland waters.” Wis. Stat. § 33.001(1) and (2)(b) (emphasis added). A lake district board ought to be able to articulate why property included in the lake district and subject to its added layer of taxation is more directly benefited by inclusion in the district than thousands of parcels in the **778 vicinity that are not included in the district.¹⁹

*179 ¶ 61 In short, there are factors besides whether there has been a change in circumstances that a conscientious lake district board must take into account.

¶ 62 In this case, the Rock–Koshkonong Lake District went beyond the statute, adopting procedures and criteria for the consideration of detachment petitions. One of the reasons for adopting these criteria was to promote consistency. Resolution 99–03 (A–123). The Lake District's procedure

anticipates that a petitioner will provide a "statement explaining why the property should be removed from the District." The petitioner may present testimony and evidence relevant to whether specific property is not benefited by continued inclusion in the District. *Id.* at II(A). The commissioners may question any witness, including the property owner, *id.* at II(B), and the Board may consider:

- A. The physical characteristics of the property.
- B. Its use (recreational, commercial, residential, etc.).
- C. Its relationship to the lake in terms of whether:
 - 1. It is riparian;
 - 2. It has private access rights to the lake;
 - 3. Its proximity to public access to the lake;
 - 4. It is within view of the lake; and

*180 5. It is within the watershed or ground water table of the lake.

- D. Whether the value of the property would be enhanced if the lake were to be in reasonably clean, attractive and usable condition; or whether the value of the property would be diminished if the lake were to be in a degraded condition.
- E. Whether detachment of the property will result in any "hole" or "island" in the boundaries of the District.
- F. Whether circumstances surrounding the property's inclusion in the District have changed.
- G. Any other factors relevant to whether the property is benefited by continued inclusion in the District.

Id. at A-124, III Criteria. Surely, the "relevant" factors the Board ought to address include the factors set out by the petitioner in making the case for detachment.

[11] ¶ 63 Having established criteria to consider, a lake district board should not look solely to those criteria that support its position and disregard criteria that do not, because a lake district must avoid arbitrary and capricious action. "Arbitrary action is the result of an unconsidered, wilful and irrational choice of conduct and not the result of the 'winnowing and sifting' process." *Olson v. Rothwell*, 28 Wis.2d 233, 239, 137 N.W.2d 86 (1965). Arbitrary action represents a board's will and not its judgment. The fair and

consistent *181 application of reasonable rules will blunt a detachment petitioner's claims that a lake district board has been arbitrary.

**779 ¶ 64 It should be noted that if property is detached, the detachment is not irrevocable. If a lake district undertakes a project that will benefit property that has been detached, or if the property itself changes, the lake district board may initiate proceedings to re-attach the property to the district.

[12] [13] ¶ 65 Review of a detachment determination does not permit a court to substitute its judgment for the considered judgment of a legislative body. However, the statute empowers the court to assure that the lake district board actually makes an individualized determination of whether a parcel is or "is not benefited by continued inclusion in the district," *see* § 33.33(3), and permits a court to address a plainly erroneous exercise of discretion.

¶ 66 In this opinion we do not attempt to set forth standards for determining whether property is or is not benefited by continued inclusion in a lake district. This is legislative work. Our objective is to encourage the development of reasonable standards by lake district boards and the legislature, and to assure adherence to standards when they exist, so as to promote fairness, consistency, and sound public policy.

F. Review of Detachment Decisions

¶ 67 Both the circuit court and the court of appeals assumed that this action was governed by the review principles of statutory certiorari, and they conducted their analyses accordingly.

*182 ¶ 68 The legislature did not make clear what kind of hearing it intended for an appeal under § 33.26(7). It imposed no requirement that a county board conduct an evidentiary hearing on objections to a lake district or make a record of its decision other than a resolution creating the lake district with certain required findings. Likewise, it imposed no requirement for an evidentiary hearing when a lake district board considers a detachment petition. Yet the legislature did not authorize a circuit court, on appeal, to take additional evidence in either situation.

¶ 69 Wisconsin Stat. §§ 33.26(7) and 33.33(3) each afford an aggrieved party a *right* to appeal. This implies that the decision to grant review is not discretionary with the court, and that suggests statutory certiorari.

¶ 70 In *Stacy v. Ashland County Department of Public Welfare*, 39 Wis.2d 595, 601, 159 N.W.2d 630 (1968), we examined the question of review by certiorari where *no provision* was made for a review of a decision by a board or commission. We concluded that where there are no statutory provisions for judicial review, the action of a board or commission may be reviewed by way of certiorari. *Id.* The situation in *Stacy* is somewhat analogous to the situation here.

¶ 71 Although § 33.26(7) does not mention “certiorari,” it does use the words “petition” and “appeal.” In the absence of any additional grant of authority to the court, we believe the words of the statute imply that the court is largely confined to a previously existing record. See *Nielsen v. Waukesha County Bd. of Supervisors*, 178 Wis.2d 498, 521, 504 N.W.2d 621 (Ct.App.1993). This view is supported by comparing a § 33.26(7) hearing to a § 33.32(1)(f) hearing, which is utilized for a challenge *183 to an assessment.²⁰ The latter hearing appears to contemplate more than a review of existing evidence.

¶ 72 In **780 *Lakeshore Development Corp. v. Plan Commission*, 12 Wis.2d 560, 107 N.W.2d 590 (1961), the court explained that:

The writ of certiorari at common law was limited in scope and ... usually raised only questions of jurisdiction or excess power set forth as errors in the petition ... The return was taken as conclusive if responsive to the petition and could not be impeached by collateral affidavits....

The scope and purpose of the writ of certiorari has been enlarged by statute and it is now used as a method of appeal to determine not only the jurisdiction of a municipal board ... but also to review the action of such a board as arbitrary, unreasonable, or discriminatory and sometimes to decide the merits of the action.

Id. at 565, 107 N.W.2d 590.

[14] ¶ 73 We do not perceive any authority for a court to decide *de novo* the merits of an action in detachment. We see review based on inquiry as to (1) whether a lake district board kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that the board might reasonably make the determination in question.

*184 G. Donaldson's Petition for Detachment

¶ 74 The statute on detachment requires a lake district board to make an individual determination whether specific property is or is not benefited by continued inclusion in the lake district. The petitioner has the burden of persuading the board and creating a record. A petitioner should (1) clearly state the grounds for detachment; (2) append documents, whenever possible, that tend to support these grounds; and (3) request the opportunity to testify and present evidence. The district board must respond by setting out the rules and procedures it intends to follow, and eventually it must marshal arguments and evidence to support its decision.

[15] ¶ 75 Under principles of certiorari review, the circuit court is limited to the facts contained in the record from the proceeding under review, unless a statute expands the scope of review.²¹ This principle is somewhat difficult to apply when a lake district board makes findings that go beyond the evidence adduced at the hearing, because the petitioner will not have had notice of the need to address this evidence.

¶ 76 A court is not powerless in the face of an inadequate record. If the record is inadequate because the petitioner failed to make a compelling case or failed to make a compelling offer of proof, the petitioner should lose. If the record is inadequate because the lake district did not permit the petitioner to present evidence, the lake district board would violate the spirit if *185 not the letter of the detachment statute and would subject itself to due process review.

¶ 77 In this case, Arthur Donaldson testified, a consultant to the District testified, and one of the commissioners submitted photographs. Consequently, the Rock-Koshkonong Lake District Board cannot be faulted for any failure to permit Donaldson to present evidence. However, the Lake District Board did make findings that went beyond the evidence presented at the hearing.

¶ 78 We now examine the record under the standards for statutory certiorari.

**781 ¶ 79 The first component of certiorari that we review here is whether the District acted according to law. “Law” refers not only to the applicable statutes but also to the guaranties of due process found in the state and federal constitutions. *State ex rel. Wasilewski v. Bd. of Sch. Dirs.*, 14 Wis.2d 243, 263, 111 N.W.2d 198 (1961), (citing *State ex rel. Ball v. McPhee*, 6 Wis.2d 190, 199, 94 N.W.2d 711 (1959)).

[16] ¶ 80 The court of appeals focused on the question whether the lake district board acted according to law and concluded that it did: "Donaldson's petition for detachment was properly denied on the basis that he failed to show a change in circumstance." *Donaldson*, 260 Wis.2d 238, ¶ 21, 659 N.W.2d 66. Because we conclude that this is not a correct statement of law in a situation where the county board has not made and articulated an individual determination of benefit to the petitioner's property, we reverse the court of appeals.

[17] ¶ 81. The Lake District Board also relied on this principle. The Board's first three reasons in support of its conclusion relate to its premise that the county *186 board made a legislative decision to include property in the district because such property will be benefited by inclusion in the district. Thus, according to the Board, the Lake District Board not only had no obligation to second-guess the county board about any of this property but also should *not* have second-guessed the county board about this property, *in the absence of a change of circumstances*. We reject this premise as inconsistent with the statutory scheme. Except in those rare instances in which a county board takes the time to address individual parcels and articulates the basis for a finding that these parcels will be benefited by inclusion in the district, the lake district board is expected to make its own determination whether each parcel is or is not benefited by continued inclusion in the district. Thus, the Board relied in substantial part on an incorrect theory of law.

¶ 82 Looking to another legal issue, we note that in *State ex rel. Riley v. Department of Health & Social Services*, 151 Wis.2d 618, 445 N.W.2d 693 (Ct.App.1989), the court of appeals stated:

On certiorari review, we determine *de novo* whether the department ... acted according to applicable law, whether the action was arbitrary or unreasonable, and whether the evidence supported the determination ... *An important component of the analysis is whether the department followed its own rules, "for an agency is bound by the procedural regulations which it itself has promulgated."*

Id. at 623, 445 N.W.2d 693 (emphasis added).

[18] [19] [20] ¶ 83 This analysis is inapposite in reviewing a pure exercise of legislative power. "Courts are reluctant to inquire into whether the legislature has complied with legislatively prescribed formalities in enacting a *187 statute. This reluctance stems from separation of powers and

comity concepts." *State ex rel. La Follette v. Stitt*, 114 Wis.2d 358, 364–65, 338 N.W.2d 684 (1983).

[C]ourts generally consider that the legislature's adherence to the rules or statutes prescribing procedure is a matter entirely within legislative control and discretion, not subject to judicial review unless the legislative procedure is mandated by the constitution. If the legislature fails to follow self-adopted procedural rules in enacting legislation, and such rules are not mandated by the constitution, courts will not intervene to declare the legislation invalid.

Id. at 365, 338 N.W.2d 684.

¶ 84 Although the Lake District Board adopted criteria to consider in reviewing a **782 detachment petition, it did not make the consideration of these criteria mandatory. Consequently, we do not see a due process violation in the Board's failure to discuss each of the relevant criteria. Rather, we consider the Board's failure to discuss all the relevant criteria under a different component of certiorari review.

[21] ¶ 85 The second component of certiorari review in this case is whether the Board's decision was arbitrary, oppressive, or unreasonable, representing its will and not its judgment.

¶ 86 In Resolution 99–3, the Lake District Board listed *seven* criteria that it might "consider" in reviewing a detachment petition. In reviewing Donaldson's petition, the Lake District Board enumerated *eight* "reasons" why it concluded that "the territory is benefited by continued inclusion in the District."

¶ 87 Three of the "reasons" stated by the Board relate to *one* of the seven criteria; namely, "F. Whether circumstances surrounding the property's inclusion in *188 the District have changed." This was discussed in ¶¶ 59 and 81 above and found to be legally incorrect on the facts of this case.

[22] ¶ 88 The Lake District Board did not discuss four of the seven criteria, namely "A. The physical characteristics of the property," "B. Its use (recreational, commercial, residential, etc.)," "E. Whether detachment of the property will result in any 'hole' or 'island' in the boundaries of the District," and "G. Any other factors relevant to whether the property is benefited by continued inclusion in the District." Each of

these criteria tends to support Donaldson's position. His two parcels consist of agricultural land near an interstate highway. They are zoned agricultural. They are used for agriculture, and Donaldson said he has no intention to change their use. There are no improvements on the parcels except for highway signs, and no one lives on these parcels. Detachment of the two parcels would not create any holes in the District. The District did not discuss "other" relevant factors or rebut Donaldson's arguments directly.

¶ 89 This leaves two of the seven criteria that the Board itself listed as factors for consideration. The Board's third criterion, "C," reads as follows:

C. [The land's] relationship to the lake in terms of whether:

1. It is riparian;
2. It has private access rights to the lake;
3. Its proximity to public access to the lake;
4. It is within view of the lake; and
5. It is within the watershed or groundwater table of the lake.

*189 Criterion "C"—which specifically refers to "lake"—is the source of four of the Board's eight "reasons" for finding that Donaldson's parcels are benefited.

¶ 90 The Board states that both tracts are in "near proximity" to Lake Koshkonong "and the portion of the Rock River within the District." The "northerly tract" is located approximately one mile from the Rock River; the "southerly tract" is located approximately a half-mile from the Rock River. Significantly, the Board does not indicate the distances between the two parcels and Lake Koshkonong. Instead, it shifts focus, citing distances to the Rock River because Donaldson's parcels are closer to the river than to the lake. By doing so, the Board turns Donaldson's argument on its head, using the distances he cited to establish that he is *not* benefited as proof that his parcels are in "near proximity" to the river.

**783 ¶ 91 In reviewing the Board's "near proximity" rationale, we cannot say that a legislative finding that property located one mile from a lake is "benefited" by its proximity, is an irrational finding. Similarly, we would have difficulty dismissing out of hand a legislative determination that property located five miles from a lake or river is benefited by its proximity. What is evident in this case, however, is that the

Lake District has no consistent rationale about proximity. The Lake District Board has not established a consistent standard for determining "near proximity," has switched from lake to river in its analysis, and has not explained how non-riparian agricultural land located a half-mile or a mile from the *river* is benefited by its proximity more directly than many similar parcels not included in the District and not subject to its added layer of taxation.

*190 ¶ 92 In 1999 the University of Wisconsin Extension did a study on the potential impacts of removing the Indianford Dam. See David W. Marcouiller, et al., University of Wisconsin—Extension, *Assessing Potential Economic and Ecological Impacts of Removing the Indianford Dam* (Dec. 8, 1999). The study focused on the towns of Albion, Milton, Sumner, and Koshkonong. It did not study the town of Fulton in which Donaldson's properties are located, presumably because Fulton has no riparian property on Lake Koshkonong. In the course of their analysis, the investigators indicated that they studied property within a half-mile of Lake Koshkonong. "In general, there is a rough overlap between the identified parcels within 1/2 mile and [the] newly created lake district." *Marcouiller, supra*, at 22. The investigators acknowledged that "the boundaries do not match exactly" with their half-mile calculation. However, most property in the district appears to be *within* a half-mile of the *lake*.

¶ 93 When property is a half-mile or more from the *river*, is not riparian, and has no private access to the lake or river, the benefit derived from "proximity" is not so self-evident that it requires no explanation in a detachment decision. In this case, the Board failed to link proximity to benefit.

¶ 94 The Board gave another "reason" for opposing detachment. It stated: "Both tracts are within the Rock River watershed and within the sub-watershed areas that drain into portions of the Rock River and Lake Koshkonong within the boundaries of the District." Judge Welker addressed this reason, saying: "There is a very great deal of land in Rock County [as well as Jefferson and Dane Counties] which is within *191 the Rock River watershed or drains into the Rock River or Lake Koshkonong which is not included in the District."

¶ 95 Under cross-examination, the Board's witness, Steve Hjort, acknowledged that all land in Wisconsin is within some watershed. Consequently, the fact that property is located in a watershed or sub-watershed tells us very little about how that property affects a lake or river or how that property

is benefited by inclusion in a lake district. Again, the Lake District Board provides a fact without showing how that fact is relevant to benefit. As Judge Welker put it, the fact or reason was not one of “any controlling probity.”

¶ 96 As another reason, the Lake District Board stated: “Although neither parcel is riparian, both parcels are located in close proximity to public boat launch facilities.” It explained that the northern parcel is located approximately 2.5 miles from the DNR boat launch site on Ellendale Road and one mile from several private boat launching facilities. The southern parcel is “located approximately 1 mile from the DNR boat launching site.” It did **784 not explain that this DNR site is on the Rock River, not the lake.

¶ 97 If Donaldson's parcels consisted of residential property, inhabited by boaters and potential boaters, the Board's reason might be relevant. But Donaldson's parcels consist of agricultural land with no residents and no improvements. There are no potential boaters on the property to take advantage of proximity, and no boats are stored there. The District must acknowledge in emphasizing this reason that Donaldson's property is not riparian and has no private access rights to the lake or river. As a result, Donaldson's property is not markedly different from property in Edgerton or Milton, or even Janesville, *192 except that trailering a boat from one of his two agricultural parcels to a public launch site would take a few minutes less time than trailering a boat from residential property in one of these communities. Moreover, there are properties closer to the DNR public launch site than Donaldson's properties that are not in the Lake District.

¶ 98 As its final “C”-criterion reason, the Board states: “The southerly tract has a direct view of the Rock River.” This reason was supported at the hearing by a photograph taken from Knutson Road near Donaldson's southern parcel and is not disputed. In reviewing this rationale, we note that it is undisputed in the record that neither parcel has a direct view of Lake Koshkonong, and there is no evidence that there is a direct view of the river from the northern parcel. Hence, this reason for opposing detachment applies only to the southern parcel. In citing this reason, the Lake District Board is contending that agricultural land located more than eight football fields away from the river is “benefited” by a direct view of the river. This evidence is not compelling.

¶ 99 We turn now to the Board's final reason for opposing detachment, a reason related to the Lake District Board's fourth criterion, “D.”²² The Board states: “The value of both

tracts will be enhanced if the water quality and recreational value of the Lake Koshkonong and associated reaches of the Rock River within the District are improved and will be diminished if the *193 Indianford Dam were removed or if water quality and recreational value of the lake and associated reaches of the Rock River were further degraded.”

¶ 100 In reviewing this reason, we are reminded of the legislature's findings and declaration of intent. Wis. Stat. § 33.001(1). In 1974 the legislature determined that “the protection and rehabilitation of the public inland lakes of this state are in the best interest of the citizens of this state” and “the public health and welfare will be benefited thereby.” *Id.* In other words, in a broad legislative sense, residents of Milwaukee, La Crosse, Superior, Marinette, and all Wisconsin, are “benefited” by a clean, healthy Lake Koshkonong, as well as other inland lakes, because protected, rehabilitated public inland lakes “benefit” the public health and welfare. This does not mean, however, that residents of Milwaukee, La Crosse, Superior, and Marinette could reasonably be included in the Rock-Koshkonong Lake District because they are not “directly affected” by a “deteriorated condition” of this lake. § 33.001(2)(b). The same analysis must be applied in evaluating Donaldson's parcels. Are the parcels “directly **785 affected” by some condition of these waters?

¶ 101 Is the “value” of Donaldson's two tracts enhanced by the quality of Lake Koshkonong and the Rock River? The Board bases its reason on contingencies: the “value” of the parcels will be affected “if” the water quality and recreational value are improved, or “if” the Indianford Dam were removed, or “if” water quality and recreational value were degraded. The Board does not reference what actions it has taken, is taking, or will take in this regard, nor has it explained how these actions have affected or will affect the value of non-riparian agricultural land. The Board relies on the relationship between Donaldson's properties and *194 the Rock River but does not explain how removal of the Indianford Dam would affect his properties or any properties linked to the Rock River. In all likelihood, any increased land value would depend on the conversion of the land to residential use instead of agricultural use. This contingency is inconsistent with Donaldson's testimony. Once again, the Lake District Board has failed to articulate the linkage between its reason and present benefit to the particular parcels of land.

¶ 102 To sum up, the Lake District Board exercised its will and not its judgment. It placed heavy emphasis on a

requirement for a change in circumstances in a situation in which a change in circumstances was not required. It failed to address or rebut the grounds given by the petitioner. In so doing, it failed to discuss several criteria it had identified in its own rules. Although the Board gave several reasons for its decision beyond the absence of a change in circumstances, it consistently failed to explain why these reasons were relevant in showing direct benefit to Donaldson's property and why Donaldson's property was more directly benefited than many other properties not included in the Lake District. The Lake District Board consistently failed to discuss how its past, present, and future actions were benefiting Donaldson's parcels. In short, the Board was arbitrary and unreasonable. Were we to conclude that the Board's hollow, ritualistic enumeration of reasons was sufficient to sustain its refusal to detach the Donaldson properties, we would render the detachment procedure meaningless.

¶ 103 There is one additional component for certiorari review that we should mention: whether the evidence was such that the Board might reasonably make the determination in question. We conclude that *195 the evidence—the reasoning—cited by the Lake District Board was not sufficient to sustain its decision. As noted, the Board failed to link several of its reasons to a finding of benefit and failed to justify its disregard of the reasons proffered by Donaldson.

H. Lake Districts and Certiorari Review

¶ 104 This court is extremely sensitive to its obligation to afford substantial deference to any exercise of legislative power. When a lake district performs its legislative functions, it is entitled to this deference, and courts should be reluctant to invalidate its legislative decisions. Nonetheless, there must be a clear-eyed analysis of the predicament inherent in the exercise of legislative power by lake districts.

¶ 105 As a general rule, all property in Wisconsin is situated within a city, village, town, or Indian reservation, and is either taxable or tax exempt. All property within a lake district is also situated within a city, village, or town, and is subject to whatever taxes the pertinent municipality may impose. When property is included within a lake district, it is subject to an additional level of taxation: that is, it is subject to a tax on top of the tax imposed **786 by the county, the city, village, or town, the vocational-technical district, and the school district. There must be some discernible reason why any property is required to pay an additional layer of taxes.

¶ 106 In theory, a town sanitary district is also an additional layer of government. However, cities and villages have clear statutory authority to handle sanitary issues while towns do not. As a result, towns create sanitary districts so that certain functions can be performed that cannot be performed by the towns themselves. *196 In this sense, sanitary districts are not an additional layer of government.

¶ 107 Lake districts are truly an additional layer of government, and they are created by people driven by a laudable but special interest. Special interest petitioners devise the boundaries of a lake district to serve this interest and they submit their plan to a county board for approval. The county board may carefully evaluate every parcel of property to determine whether it should be included in the district. As a practical matter, this is not likely to happen. Such a review would require a conscientious board to fine-tune the proposal submitted by the petitioners and collectively draw up its own plan. This is especially unlikely to happen with respect to property located in a different county.

¶ 108 Thus, because the legislature has failed to establish clear standards for what property may be included in a district, a lake district may be a gerrymandered creation that is ultimately turned over to the people who drew the lines. Property owners disgruntled by their inclusion in the district may not have means to influence the elected county board officials who approve the creation, or the ability to punish at the ballot box either the board or the lake district commissioners who administer their own creation. In this regard, creation of a lake district has fewer checks than creation of a town sanitary district.

¶ 109 If courts are unable to provide any meaningful protection to property owners, the creation and governance of lake districts will lend themselves to serious abuse. The limitations of certiorari review do not provide much protection. Consequently, we urge the legislature to reexamine the statutes on lake districts to provide reasonable standards for legislative decisions, *197 whether by a county board creating a district or by a lake district board in governing a district.

III. CONCLUSION

¶ 110 For the reasons stated, we conclude that the Lake District Board failed to render a satisfactory determination of whether Arthur Donaldson's two parcels of territory are

not benefited by continued inclusion in the Lake District. The Board improperly relied on the premise that Donaldson was required to show a change in circumstances from the time the Lake District was formed, even though the Rock County Board had not made an individualized determination that his parcel would be benefited by inclusion in the district. Although the Board stated additional reasons for denying Donaldson's petition for detachment, its determination was arbitrary and unreasonable, representing its will and not its judgment. The court of appeals decision reversing the decision of the circuit court and upholding the Lake District Board is reversed, and this case is remanded to the circuit court for action consistent with this opinion.

The decision of the court of appeals is reversed and the cause is remanded to the circuit court for further proceedings consistent with this opinion.

¶ 111 N. PATRICK CROOKS, J., dissenting.

Because the majority fails to accord the required deference to the decision of the **787 Lake District Board, I respectfully dissent. I disagree with the majority's conclusion that an owner of property located within a lake district is not required to show a change of circumstances in order to have that territory detached from the lake district. I *198 respectfully dissent because the majority's ruling institutes a duplicative process that undermines a county board's previous determination that each individual property in the Lake District "will be benefited by the establishment" of such district. Wis. Stat. § 33.26(3). The term "benefited" has the same meaning in § 33.26(3), the lake district creation statute, and Wis. Stat. § 33.33(3), the statute governing detachment. In coming to an opposite conclusion, the majority both improperly interpreted § 33.33(3) and failed to avail itself of case precedent illustrating that the term "benefited," as it appears in both §§ 33.26(3) and 33.33(3), refers to each individual parcel within the lake district.

¶ 112 The majority begins its discussion of the relationship between the word "benefited" in Wis. Stat. §§ 33.26(3) and 33.33(3) by agreeing that the decision to detach is legislative. Majority op., ¶ 56. The majority then states that because the term "frontage" was not included in the lake district legislation but was included in earlier drafts of that legislation, a fair inference can be drawn that the detachment procedure for lake districts was intended to be a safeguard ensuring that a property owner is provided an individual decision regarding whether the owner's specific property is

benefited by continued inclusion. *Id.*, ¶ 57. The majority then concludes that the definition of benefit under § 33.26(3), which relates to whether property "will be benefited," is not the same as under § 33.33(3), which speaks to whether "territory is not benefited by continued inclusion in the district." *Id.*, ¶ 58.

¶ 113 The majority needs to look no further than the statutes themselves to determine that "benefited" has the same meaning in both Wis. Stat. §§ 33.26(3) and 33.33(3). Because both statutes are in Subchapter IV of Chapter 33, the proper rule of statutory construction *199 dictates that "benefited" should be attributed the same meaning unless the statutory context calls for a different meaning. *Wilson v. Waukesha County*, 157 Wis.2d 790, 796, 460 N.W.2d 830 (Ct.App.1990) (rejecting ascribing a different meaning to the word "malicious" that appeared multiple times in the same statute because the statutory structure did not call for different meanings). Here, the context does not call for a different meaning of the term "benefited."

¶ 114 In fact, the statutory context leads me to conclude that "benefited" must be defined the same way in both statutes in the same chapter. Wisconsin Stat. § 33.33(3) states, in relevant part: "Proposals for detachment shall be considered by the commissioners, and territory may be detached upon a finding that such territory is *not benefited by continued inclusion* in the district." (Emphasis added). The language, "not benefited by continued inclusion," indicates that the individual property that the owner is petitioning for detachment has *already* been determined by the county board to be benefited by inclusion in the lake district. The effect of the majority's decision is to allow members of a lake district to challenge a county board's determination that the owner's property was benefited by inclusion in the lake district by appealing to the Lake District Board without the need to show a change in circumstances. As the court of appeals noted, Donaldson's testimony during his hearing before the Lake District Board proves this point.

[LAKE DISTRICT BOARD]: [H]as anything changed since Rock County **788 passed the resolution forming the lake district ... or did they make a mistake back then when they formed this lake district?

MR. DONALDSON: I think they made a mistake back then because it was farm land when I bought it and I've *200 owned it for a number of years and it's still farm land, but I don't intend to do anything else with it other than farm land.

[LAKE DISTRICT BOARD]: So there haven't been any changes in the conditions of the property since then?

MR. DONALDSON: No.

¶ 115 The court of appeals held, as did the Lake District Board, that without a showing of changed circumstances Donaldson is not entitled to detachment.¹ I agree with them.

¶ 116 I find additional support for this conclusion in Wis. Stat. § 33.26(7), which establishes a 30-day window for a person "aggrieved by the action of the board" to petition the circuit court for review of the county board's action in including a particular property within the lake district's boundaries. The majority's approach eviscerates the legislature's intent to limit the time period that a property owner has to challenge such a decision by a county board. Chapter 33 also undercuts the majority's concern that property owners will be compelled to remain in lake districts in perpetuity, unless they can challenge the county board's determination that their property is benefited by inclusion in the lake district by way of Wis. Stat. § 33.33(3) without any showing of changed circumstances. Chapter 33 provides property owners with two reasonable options: An owner can make a timely petition, initially, under § 33.26(7), challenging a county board's decision to include the owner's property in a lake district, and an owner can also, later, petition for detachment if the *201 owner is able to demonstrate changed circumstances under § 33.33(3). If shown, such circumstances would allow a lake district board to order detachment.

¶ 117 The majority acknowledges that application of *Fort Howard Paper Co. v. Fox River Heights Sanitary District*, 250 Wis. 145, 26 N.W.2d 661 (1947), leads to the conclusion that this case is subject to certiorari review. However, it fails to give deference to language in *Fort Howard*, as the court of appeals pointed out, illustrating that a finding that an entire district is "benefited" means that each individual property in the district has the potential to be benefited.

¶ 118 In *Fort Howard*, a property owner argued that its property should not be included in a sanitary district because its individual property was not benefited by inclusion. *Id.* at 152, 26 N.W.2d 661. *Fort Howard* asserted that in order to be included in the district, its property had to be immediately benefited by such inclusion. *Id.* Focusing on benefit to the property of the district as a whole, this court disagreed, concluding that when such property as a whole is benefited then each individual property within the district is benefited

by inclusion in the district. *Id.* The fact that the individual property did not realize immediate benefits did not preclude the formation of the district. *Id.* The *Fort Howard* court stated:

If the town board finds that the property within the boundaries of the proposed district as a whole will be benefited then the district is to be organized. For example, if some parcel of land was included in the proposed district which lay out **789 of the watershed and could not be served by the proposed improvement, manifestly a property so situated could not be benefited. If all the property within the boundaries of the proposed district is in the watershed and the proposed *202 improvement may serve it, then the property of the district as a whole is benefited and the town board if it makes the other necessary finding may organize the district.

Id. (Emphasis added).

¶ 119 The court of appeals properly interpreted this directive from *Fort Howard* and commented: "Stated differently, a finding that a district as a whole is 'benefited' will stand unless some parcel in the district is not benefited by the inclusion." *Donaldson v. Bd. of Comm'rs of Rock-Koshkonong Lake Dist.*, 2003 WI App. 26, ¶ 15, 260 Wis.2d 238, 659 N.W.2d 66.

¶ 120 Further affirmation for this interpretation of *Fort Howard* emerges from the court of appeals' statement that "[t]his reading of *Fort Howard* is further supported by the subsequent discussion of the particular facts in that case and the supreme court's conclusion: 'it appears from the undisputed evidence that the property of the plaintiff will be benefited.' " *Id.* The court of appeals pointed out that "[i]f benefit to the individual parcel at issue in *Fort Howard* was irrelevant, the supreme court would not have explained why the parcel was benefited." *Id.* The court of appeals went on to conclude that the text of Subchapter IV in Chapter 33 did not suggest that the term "benefited" had a different meaning prior to the time when the lake district was formed than it had after it was formed. *Id.*, ¶ 21, 26 N.W.2d 661. Again, not requiring Donaldson to show a change in circumstances is contrary to the language and proper interpretation of the statutes at issue.

¶ 121 As mentioned above, the court of appeals' interpretation of the language "benefited" was correct. In upholding the Lake District Board's decision to deny Donaldson's petition, the court found persuasive the *203 Board's argument "that Donaldson's opportunity to challenge whether his property was properly included in the District is governed by Wis. Stat. § 33.26, and because Donaldson failed to avail himself of that opportunity, he must now demonstrate a change in circumstances showing he is no longer 'benefited,' using the same definition of 'benefited' used by the county board when the Lake District was created." *Id.*, ¶ 12, 26 N.W.2d 661. Unlike the majority, the court of appeals did not fail to give weight to the Board's decision when determining that the property included in the Lake District would potentially benefit by such inclusion.

¶ 122 The majority's decision ignores the legislative role of both the County Board and the Lake District Board. The majority concedes that certiorari review of a detachment decision does not allow it to substitute its judgment for the Lake District Board's determination. Majority op., ¶ 51. Yet, by not recognizing that the County Board's original finding that each property benefited by inclusion in the Lake District, by failing to apply the rules of certiorari review, correctly, and by failing to accord to the Lake District Board's decision the presumption of correctness, the majority has wandered from the correct analytical path into a thicket of error. While claiming to recognize the presumption, the majority only applies the presumption of correctness to the County Board's creation of the Lake District, *see* majority op., ¶ 53, n. 13, even though the majority recognizes the decision of the Lake District Board on detachment to be a legislative one. Majority op., ¶¶ 4 and 56.

**790 ¶ 123 As the majority notes, "a court may not exercise legislative power." Majority op., ¶ 48 (quoting *Fort Howard*, 250 Wis. at 150, 26 N.W.2d 661). Yet the majority seems to ignore this directive by according the Lake District *204 Board's decision little or no deference. The decision of the Board is a legislative determination. *See Joint Sch. Dist. v. State Appeal Bd.*, 56 Wis.2d 790, 794, 203 N.W.2d 1 (1973). When reviewed on appeal, the Board's decision should be reviewed to determine whether it exceeded its jurisdiction or acted arbitrarily or capriciously. *Id.* at 795, 203 N.W.2d 1. A presumption of correctness must be afforded to a decision of a board such as the Lake District Board, if there is no violation of those factors.

¶ 124 More specifically, I agree with the majority (*see* majority op., ¶ 4) that the only factors a court may properly consider on review are as follows: (1) Whether the board kept within its jurisdiction; (2) whether the board acted according to law; (3) whether the board's action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question. *State ex rel. Mitchell Aero v. Bd. of Review*, 74 Wis.2d 268, 281–82, 246 N.W.2d 521 (1976) (citing *Dolphin v. Bd. of Review*, 70 Wis.2d 403, 408, 234 N.W.2d 277 (1975)).

¶ 125 The court of appeals properly recognized these principles of certiorari review. *Donaldson*, 260 Wis.2d 238, ¶ 10, 659 N.W.2d 66. The court focused its analysis on the second prong, since the circuit court found that the Board acted contrary to law.² The court reasoned that because the Lake District Board proceeded on the correct theory of law—a property owner who is part of a lake district must show a change in circumstances in order to successfully petition for detachment from that *205 district—it did not have to address the remaining three factors. *Id.* I conclude that the Lake District Board was right in its assessment and provided sufficient support for its decision not to grant detachment.

¶ 126 The Board provided detailed reasons justifying its position that Donaldson's request for detachment should be denied. The Board stated the following, in relevant part:

First, both tracts were within the original boundary of the District approved by the Rock County Board of Supervisors Resolution 99–A–038.

Second, the Rock County Resolution included a finding that the property included in the District will be benefited by the establishment of the Rock–Koshkonong Lake District.

Third, no evidence has been provided to the commission indicating that there has been any change in the property inconsistent with the Board of Supervisors' findings that these tracts benefit from inclusion in the District.

Fourth, both tracts are within the Rock River watershed, and within the subwatershed areas that drain into the portions of the Rock River and Lake Koshkonong within the boundaries of the district.

Fifth, both tracts are located in near proximity to Lake Koshkonong and the portion of the Rock River within the District....

Sixth, although neither parcel is riparian both parcels are located in close **791 proximity to public boat launch facilities....

Seventh, the southernly tract has a direct view of the Rock River.

*206 Eighth, the value of both tracts will be enhanced if the water quality and recreational value of Lake Koshkonong and associated reaches of the Rock River within the District are improved and will be diminished if the Indianford dam were removed or if the water quality and recreational value of the lake and associated reaches of the Rock River were further degraded.

¶ 127 After detailing these considerations, the Lake District Board finally concluded that Donaldson's territory was benefited by its inclusion in the District. Nevertheless, the majority concludes that the Board "exercised its will and not its judgment." Majority op., ¶ 102.³

*207 ¶ 128 While the majority provides what the Lake District Board could have used as an alternative analysis, that analysis is no more reasonable than the one applied by the Board. The Board need not look to every criteria it had established for a review of a petition for detachment. The majority admits that those factors are guidelines—not mandatory. The majority's inappropriate application of certiorari review is best exemplified by its own fact-finding that an increase in property value results from recreational use, not agricultural use. The majority fails to take into account the potential that land included in the Lake District will experience increases in its property value, not only because of the activities on that property, but also as a result of the activities occurring on other properties included in the Lake District.

¶ 129 For all of the foregoing reasons, I respectfully dissent.

¶ 130 I am authorized to state that Chief Justice SHIRLEY S. ABRAHAMSON and Justice ANN WALSH BRADLEY join this dissent.

All Citations

272 Wis.2d 146, 680 N.W.2d 762, 2004 WI 67

Footnotes

† Motion for Reconsideration filed June 29, 2004.

1 *Donaldson v. Bd. of Comm'rs of Rock-Koshkonong Lake Dist.*, 2003 WI App 26, ¶ 2, 260 Wis.2d 238, 659 N.W.2d 66.

2 All references are to the 2001–02 version of the Wisconsin Statutes unless otherwise indicated.

3 In Wis. Stat. § 33.33(3) the legislature uses the word "territory" to describe the land a petitioner seeks to detach from the lake district. This word is different from the word "property" in Wis. Stat. § 33.26, which is used to describe land included in a lake district at the time the district is created. In this opinion, we use the phrases "Donaldson's territory," "Donaldson's parcels," and "Donaldson's property" interchangeably. *But see* n. 17, *infra*.

4 See Wis. Stat. § 33.37 for a county board's authority to create a lake district in more than one county.

5 Section 33.26(3) states:

The committee shall report to the county board within 3 months after the date of the hearing. Within 6 months after the date of the hearing, the board shall issue its order under this subsection. If the board finds, after consideration of the committee's report and any other evidence submitted to the board, that the petition is signed by the requisite owners as provided in s. 33.25, that the proposed district is necessary, that the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of the district, *that the property to be included in the district will be benefited by the establishment thereof*, and that formation of the proposed district will not cause or contribute to long-range environmental pollution as defined in s. 299.01(4), the board, by order, shall declare its findings, shall establish the boundaries and shall declare the district organized and give it a corporate name by which it shall be known. Thereupon the district shall be a body corporate with the powers of a municipal corporation for the purposes of carrying out this chapter. If the board does not so find, the board, by order, shall declare its findings and deny the petition. (Emphasis added.)

6 Wisconsin Stat. § 33.26(1) states in relevant part: "Any person wishing to object to the organization of such district may, before the date set for the hearing, file objections to the formation of such district with the county clerk."

- 7 Wisconsin Stat. § 33.33(3) provides:
Territory may be detached from the district following petition of the owner or motion of the commissioners. Proposals for detachment shall be considered by the commissioners, and territory may be detached upon a finding that such territory is not benefited by continued inclusion in the district. Appeals of the commissioners' decision may be taken under s. 33.26(7).
- 8 Wisconsin Stat. § 33.30(4)(a) provides that the electors and property owners may, at the district's annual meeting, Vote by majority a tax upon all taxable property within the district. That portion of the tax that is for the costs of operation for the coming year may not exceed a rate of 2.5 mills of equalized valuation as determined by the department of revenue and reported to the district board. The tax shall be apportioned among the municipalities having property within the district on the basis of equalized full value, and a report shall be delivered by the treasurer, by November 1, by certified statement to the clerk of each municipality having property within the district for collection. Wis. Stat. § 33.30(4)(a).
- 9 1973 Assembly Bill 766 became Chapter 301, Laws of 1973.
- 10 Compare Wis. Stat. § 60.303(3) (1945) with Wis. Stat. § 33.26(3). Former Wis. Stat. § 60.303(3) provided:
Upon the hearing, if it shall appear to the town board after consideration of all objections, that the petition is signed by the requisite owners of real estate as provided in subsection (1) of section 60.302, and that the proposed work is necessary, and that the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of such district, and *the property to be included in the district will be benefited by the establishment thereof*, the town board, by formal order, shall declare its findings and shall establish the boundaries and shall declare the district organized....
Current Wis. Stat. § 33.26(3) provides:
If the board finds, after consideration of the committee's report and any other evidence submitted to the board, that the petition is signed by the requisite owners as provided in s. 33.25, that the proposed district is necessary, that the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of the district, that *the property to be included in the district will be benefited by the establishment thereof*, and that formation of the proposed district will not cause or contribute to long-range environmental pollution ..., the board, by order, shall declare its findings, shall establish the boundaries and shall declare the district organized....
- 11 The contemporary counterpart to § 60.303(3) (1945) requires a town board to find, among other things, that "[p]roperty to be included in the district will be benefited by the district." Wis. Stat. § 60.71(6)(b).
- 12 The current counterpart of this provision provides:
Any person aggrieved by any act of the town board or the department of natural resources in establishing a town sanitary district may bring an action in the circuit court of the county in which his or her lands are located, to set aside the final determination of the town board or the department of natural resources, within 90 days after the final determination, as provided under s. 893.73(2). If no action is taken within the 90-day period, the determination by the town board or the department of natural resources is final.
Wis. Stat. § 60.73.
- 13 When a county board determines that the property within the district *as a whole* will be benefited by the formation of the district, its broad finding necessarily includes a determination that each parcel in the district will be benefited, and that finding is presumed to be correct. But a presumption of correctness goes only so far in the absence of an individual determination. In reality, a county board may do nothing more than rubberstamp a petition and parrot the words required by statute. The record does not indicate whether the Rock County Board of Supervisors made any changes in the boundaries of the lake district proposed in the petition.
- 14 *Ross v. Honey Lake Protection and Rehabilitation District*, 166 Wis.2d 739, 746, 480 N.W.2d 795 (Ct.App.1992), emphasizes that actions challenging a county board's *creation* of a lake district must be brought within the statutory 30-day time limit. Wis. Stat. § 33.26(7).
- 15 The jurisprudence relating to school district reorganization, which includes detachment of property from one school district followed by reattachment to another district, is instructive. In *Joint School District No. 1 of the Town of Wabeno v. State*, 56 Wis.2d 790, 203 N.W.2d 1 (1973), we stated that "school district reorganization is a legislative policy-making function, which the legislature has delegated to local boards and to the state superintendent of public instruction." *Id.* at 794, 203 N.W.2d 1 (collecting cases).
- 16 Sanitary districts did not have a removal provision until 1987. In *Haug v. Wallace Lake Sanitary District*, 130 Wis.2d 347, 387 N.W.2d 133 (Ct.App.1986), the court of appeals decided a case brought by several residents of a sanitary district who complained that they were being assessed for a sanitary sewer system from which they received no service. The residents

contended that the town had authority to redefine the boundaries of the district without dissolving the district, permitting them to get out. The court of appeals disagreed. Shortly thereafter, the legislature enacted the removal provision in Wis. Stat. § 60.785(1m). Act 77, Laws of 1987.

17 We also note that the legislature chose a different word to describe the large mass of real estate proposed for inclusion in the district and the individual parcels that are likely to come before a lake district board for detachment. In the former instance, the legislature opted to use the term "property," but in the latter detachment provision the legislature chose the word "territory." While neither of these words is used with precision in the statutes, the differing formulations for the same concept suggest that the legislature did not intend complete identity between the two proceedings. If it had so intended, the legislature would have used the same language in both.

18 A lake district board's individualized determination of whether a specific parcel is or is not benefited by continued inclusion in the lake district might be characterized as a quasi-judicial determination, rather than a legislative determination. We decline to pursue this point, urging instead that the legislature establish additional standards for lake district boards.

19 We also note that the detachment decision may precede or coincide with a hearing contesting a special assessment. A special assessment hearing explicitly requires commissioners to "examine each parcel and determine the benefits to each parcel from the project, considering such factors as size, proximity to the lake and present and potential use of the parcel, including applicable zoning regulations." Wis. Stat. § 33.32(1)(b). Commissioners must be able to explain why property is benefited by inclusion in the lake district if they intend to impose special assessments on that property.

20 Wisconsin Stat. § 33.32(1)(f) provides in part: "Such appeal shall be tried and determined in the same manner as cases originally commenced in said court."

21 See, e.g., Wis. Stat. § 59.694(10) (authorizing the court to take additional evidence in a review of a decision by a board of adjustment).

22 Paragraph D. of the Lake District Board's Criteria reads as follows: "D. Whether the value of the property would be enhanced if the lake were to be in reasonably clean, attractive and usable condition; or whether the value of the property would be diminished if the lake were to be in a degraded condition." A-124.

1 Rock-Koshkonong Lake District Resolution 99-03, Section III(F) states, in relevant part, that the Board may consider "[w]hether circumstances surrounding the property's inclusion in the District have changed."

2 The circuit court, in its decision, determined that the decision of the Lake District Board was contrary to the statute and that no change of circumstances was required for detachment.

3 I strongly disagree with the majority's characterization of the Board's decision-making process. The Board clearly exercised its judgment in applying the criteria set forth in Rock-Koshkonong Lake District Resolution 99-03, Section III. Section III states, in relevant part:

In its consideration of whether the subject property is benefited by continued inclusion in the District, the Board may consider:

A. The physical characteristics of the property.

B. Its use (recreational, commercial, residential, etc.).

C. Its relationship to the lake in terms of whether:

1. It is riparian;

2. It has private access rights to the lake;

3. Its proximity to public access to the lake;

4. It is within view of the lake; and

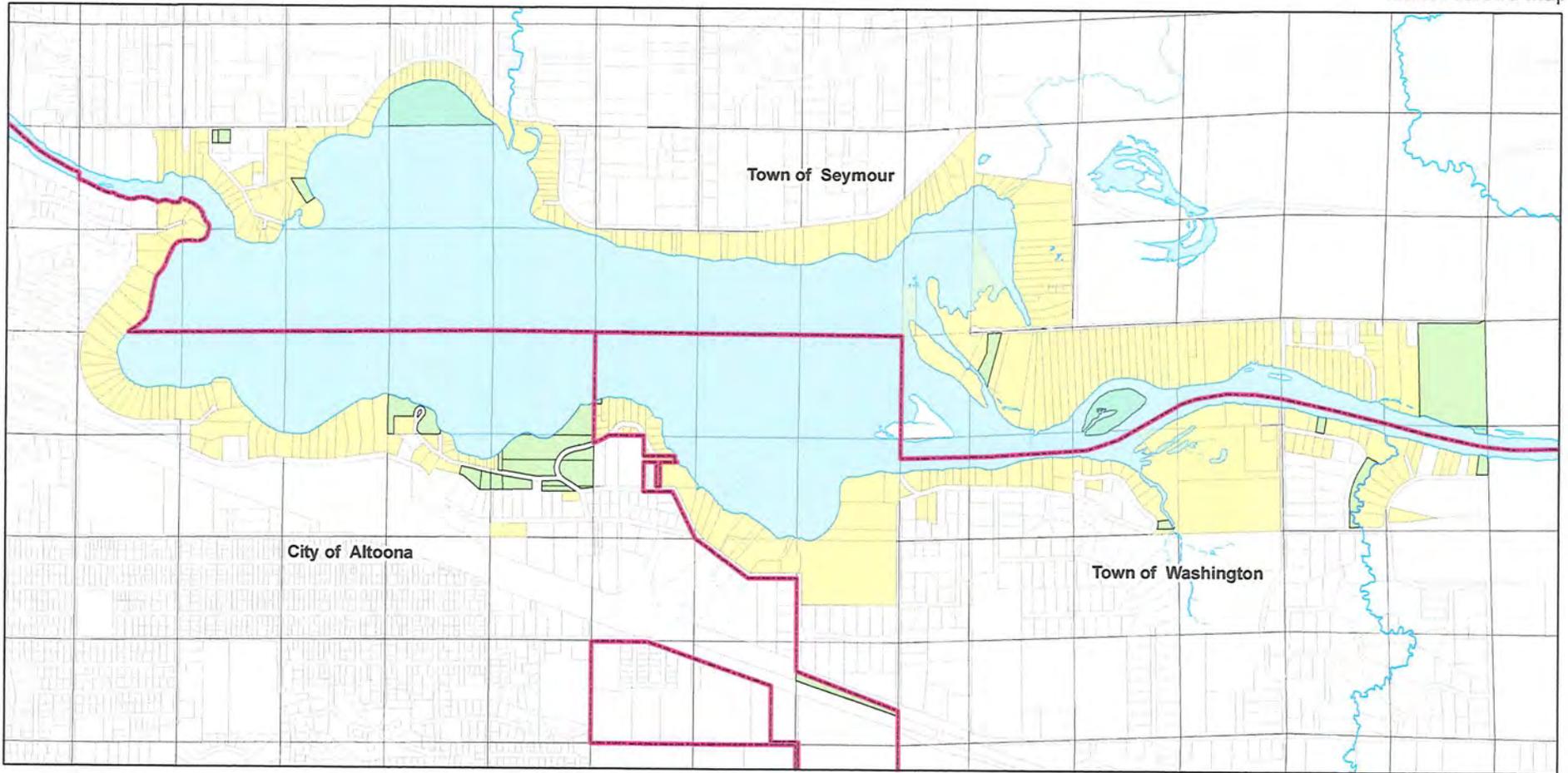
5. It is within the watershed or ground water table of the lake.

D. Whether the value of the property would be enhanced if the lake were to be reasonably clean, attractive and usable condition; or whether the value of the property would be diminished if the lake were to be in a degraded condition.

E. Whether detachment of the property will result in any "hole" or "island" in the boundaries of the District.

F. Whether circumstances surrounding the property's inclusion in the District have changed.

G. Any other factors relevant to whether the property is benefited by continued inclusion in the District.



Eau Claire County Index Map



Legend

- Lake Altoona District Tax Exempt Parcels
- Lake Altoona District Parcels
- Parcels
- Civil Divisions

EAU CLAIRE COUNTY WISCONSIN
 The Department of Planning & Development
 Eau Claire County Courthouse
 721 Oxford Avenue, Room 1510
 Eau Claire, WI 54703-5481
 715-839-4741



Parcel Mapping Notes:

The horizontal datum is based on the Eau Claire County Coordinate System NAD83_1983_Planet_Mid_M_Coordinate_Feet.
 This map is a collection of public record information and was prepared as an ongoing commitment to provide quality and up-to-date information to the public. This map is intended for information use only. Although significant care has been exercised to produce maps that satisfy mapping accuracy standards, these maps are only as accurate as the source data from which they were compiled. These maps are intended to be advisory and are NOT designed or intended to be used as a substitute for an accurate field survey, as performed by a Wisconsin Credentialed Land Surveyor, to determine precise property location.
 Eau Claire County does not warrant, guarantee or make any representations regarding the use of, or results from the use of, the data on the map and results solely at their own risk.
 All zoning district designations are subject to confirmation by contacting The Department of Planning and Development.

Eau Claire County Parcel Mapping



1 inch = 200 feet

PLSS Lines

- Meander Line
- Forty Line
- Quarter Section Line
- Section Line

Parcel Lines

- Parcel Line
- Extended Parcel Line
- - - Tie Line
- Extended Tie Line
- Road Right-of-Way Lines

Platted Lands

- Certified Survey Map
- Condominium Plat
- Assessors or Subdivision Plat

Navigability

- Navigable
- - - Non-Navigable

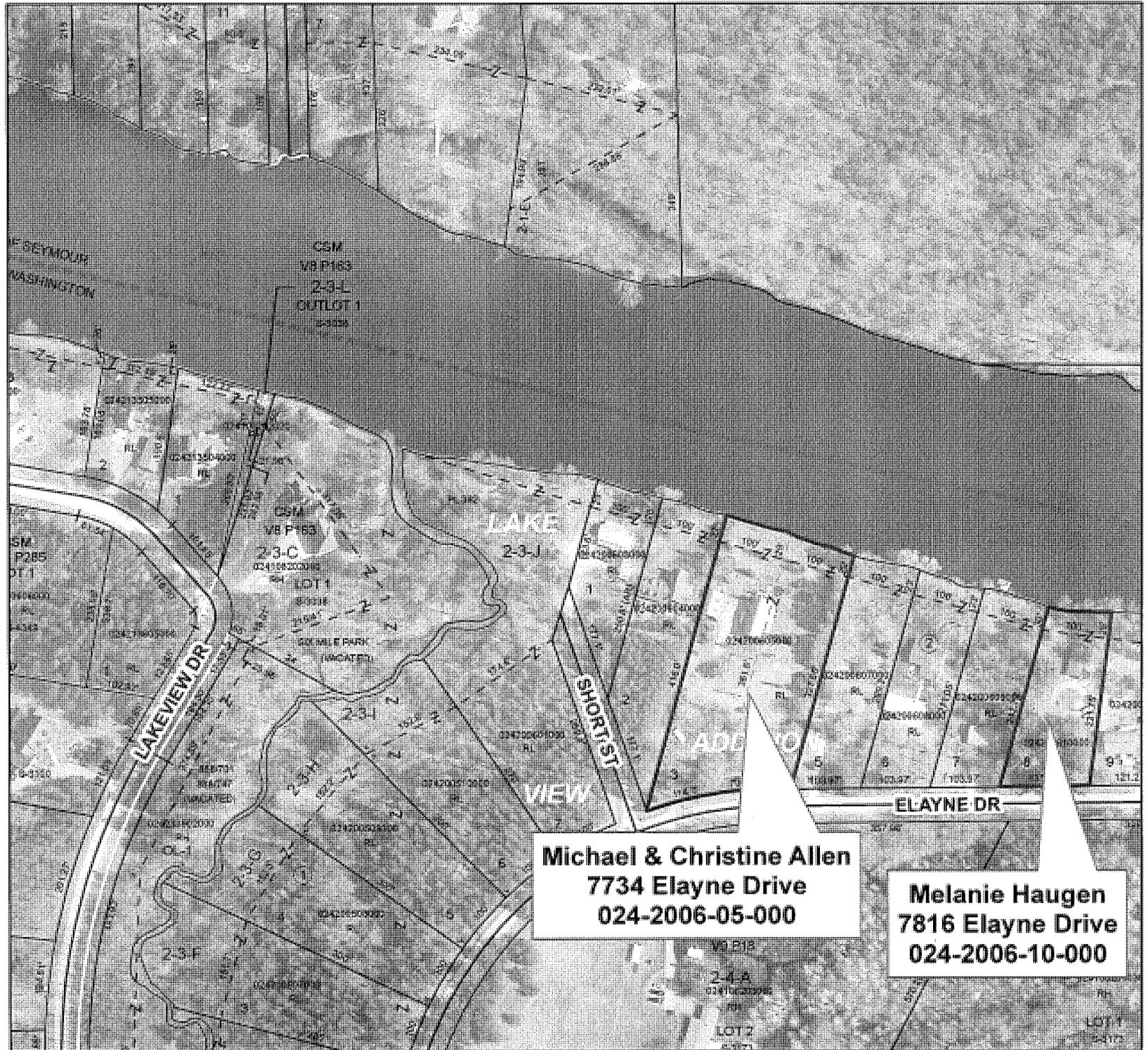
Alternate Number = 026107103000
Survey Map Index Number = S-2769

Parcel Mapping Notes:
The horizontal datum is based on the Eau Claire County Coordinate System NAD_1983_HARN_Ad_WI_EauClaire_Feet

This map is a collection of public record information and was prepared as an ongoing commitment to provide quality and up-to-date information to the public. This map is intended for information use only. Although significant care has been exercised to produce maps that satisfy mapping accuracy standards, these maps are only as accurate as the source data from which they were compiled. These maps are intended to be advisory and are NOT designed or intended to be used as a substitute for an accurate field survey, as performed by a Wisconsin Credentialed Land Surveyor, to determine precise property location.

Eau Claire County does not warrant, guarantee or make any representations regarding the use of, or results from the use of the data in terms of correctness, accuracy, reliability, currentness, or otherwise; and the user relies on the map and results solely at their own risk.

Date:
Aerial Photography Flight Spring 2013
Information Current January 1, 2013



Michael & Christine Allen
7734 Elayne Drive
024-2006-05-000

Melanie Haugen
7816 Elayne Drive
024-2006-10-000

Introduced by Committee on Rules &
Legislation

-RESOLUTION-

FILE NO. 79-80/#290

-Reaffirming Resolution #277-74 adopted December 17, 1974 establishing the Lake Altoona District; correcting the district legal description to conform to the map; approving the district map; and directing the Corporation Counsel to file this order and map with the Register of Deeds, the Department of Natural Resources, and the Secretary of the Lake Altoona District-

WHEREAS, on December 10, 1974, a verified petition was filed with the County Clerk requesting establishment of a public inland lake protection and rehabilitation district for Lake Altoona, and

WHEREAS, a hearing was held on December 16, 1974, pursuant to Section 33.26, Statutes, before the then Agriculture and Extension Education Committee of the County Board, and

WHEREAS, the County Board thereafter made the following findings of fact:

1. That the petition dated December 2, 1974, was signed by at least 51% of the landowners (or owners of 51% of the land) in the proposed district.
2. That the public inland lake protection and rehabilitation district is necessary and will promote the public health, comfort, convenience, necessity or public welfare.
3. That property finally included in the district will be benefited by establishment thereof.
4. That formation of a district will not cause or contribute to long-range environmental pollution as defined by Section 144.30(9), Wisconsin Statutes.

WHEREAS, the County Board did, on December 17, 1974, adopt Resolution #277-74, ordering creation of the Lake Altoona District as of January 3, 1975 as a public inland lake protection and rehabilitation district pursuant to Section 33.26, Statutes, and

R-136

WHEREAS, in adopting said order, the County Board established the district boundaries, the description for which was technically deficient and did not exactly describe the plat of the district approved by the County Board, and

WHEREAS, the Lake Altoona District Board of Commissioners did on November 20, 1979 reaffirm the original district boundaries as shown on the aforementioned plat and requested the County Board to conform the County order describing said district, in resolution #277-74, to said plat;

NOW THEREFORE BE IT RESOLVED by the Eau Claire County Board of Supervisors as follows:

1. That the Board reaffirms its order in resolution #277-74 establishing the Lake Altoona District and granting it the corporate name of the "Lake Altoona District" by which it shall hereafter be known.
2. That the Board acknowledges the approval the Altoona City Council granted in 1975, pursuant to Section 33.24, Statutes, for the inclusion of that portion of the Lake Altoona District within the City of Altoona.
3. That pursuant to Section 33.26 (3), Statutes, the County Board reaffirms its original intent in establishing the district boundaries and to that end, that portion of resolution #277-74 establishing the district boundaries is hereby rescinded and recreated to read as in paragraph (4) below.
4. That the Lake Altoona District is created by the Board pursuant to Section 33.26 (3), Statutes, as a public inland lake protection and rehabilitation district to include all of the territory within the following boundaries:

Beginning at the center of Section 20, T27N-R8W, thence west to the west quarter point of Section 20, T27N-R8W, thence west to the west quarter point of Section 19, T27N-R8W, thence west to the west quarter point of said Section 24, T27N-R8W, thence north along the section line to Lake Road. Thence along Lake Road generally west in Section 23, T27N-R8W to its intersection with Rosholt Lane, thence along Rosholt Lane generally north and in Section 14, T27N-R8W to its intersection with Willson Drive, thence East to the end of Willson Drive, thence north to the south abutment of Lake Altoona Dam, thence along the center line of said dam to its north abutment, thence north to North Shore Drive, thence generally east along North Shore Drive to the north quarter point of Section 20, T27N-R8W, thence south to the point of beginning.

5. That the attached map entitled "Lake Altoona District Map" dated November 20, 1979, and as approved by the Lake Altoona District Board of Commissioners, is hereby approved by the County Board as the official district map.
6. That the Corporation Counsel is hereby directed to file copies of this order and map with the Register of Deeds, the Department of Natural Resources, and with the Secretary of the Lake Altoona District.

Adopted this 4th day of December, 1979.
Introduced by the Committee on Rules and Legislation.

ishment of a public inland lake protection and rehabilitation district to be known as Lake Altoona District and,

WHEREAS, a hearing was held on December 16, 1974 pursuant to Section 33.26, Wisconsin Statutes, with the following committee presiding: Henry E. Graff, Robert W. Dawson, Theodore P. Gunnes, Milton Kuehn, and W. Edgar Shong.

Findings of Fact

Based on the report of the committee holding the hearing in the matter, this Board finds:

1. That the petition dated December 2, 1974, was signed by at least 51% of the landowners (or owners of 51% of the land) in the proposed district.

2. That the public inland lake protection and rehabilitation district is necessary and will promote the public health, comfort, convenience, necessity or public welfare.

3. That property finally included in the district will be benefited by establishment thereof.

4. That formation of a district will not cause or contribute to long - range environmental pollution as defined by Section 144.30(9), Wisconsin Statutes.

Order

THEREFORE, BE IT RESOLVED that pursuant to Section 33.24, Wisconsin Statutes, a public inland lake protection and rehabilitation district is hereby established to include the area within the following boundaries:

In T27N-R9W, that part of Section 13 lying between North Shore Drive and the North Shore of Lake Altoona; those parts of Section 14 lying east of the County Dam approximately 1625 feet east of the west edge of Section 14 and contained between North

Shore Drive and the North Shore of Lake Altoona and South Shore Drive and the South Shore of Lake Altoona, that part of Section 23 lying between South Shore Drive and the South Shore of Lake Altoona; and the N½ of Section 24.

In T27N - R8W, that part of Section 18 lying between North Shore Drive and the North Shore of Lake Altoona; the N½ of Section 19; and the NW¼ of Section 20.

THEREFORE, BE IT FURTHER RESOLVED that the district shall be a body corporate to the extent provided by Chapter 33, Wisconsin Statutes, and shall be known as Lake Altoona District.

TED GUNNES
EDGAR SHONG
ROBERT W. DAWSON
MILTON KUEHN
HENRY E. GRAFF
Agriculture and Extension
Education Committee

WE, the Committee on Resolutions, recommend that this resolution be adopted with the following amendments.

This resolution be effective on January 3, 1975 unless the Agriculture and Extension Committee moves to reopen the public hearing.

The territory within the proposed district which is part of the city of Altoona shall be included in the said district only upon affirmative resolution by the City of Altoona.

C. S. ELLIOTT
JOHN A. DUFFY
LESTER A. DEHNKE
DAVID M. JOHNSON
Committee on Resolutions

APPROVED:

HENRY E. GRAFF
Chairman, Eau Claire
County Board

Motion by Supervisor Furay and seconded by Supervisor Dawson that the resolution be

adopted as amended. Supervisor McGrouary requested a roll call vote. Roll call 25 affirmative, 3 negative—ayes, Buchholz, Dahl, Dawson, Duax, Duffy, Elliott, Farrell, Furay, Gansluckner, Graff, Gunnes, Johnson, Kinney, Kraus, Kruger, Kuehn, Loken, Papke, Peterson, Riedel, Ryder, Shong, Smith, Dehnke, Southard and Uecke, Nayes-Dresden, McGrouary and Quick. Received majority and resolution declared adopted as amended.

Report of Committee on Resolution to replace condensate pump in Annex Building on bid and appropriate funds read as follows:

RESOLUTION No. 277-74 ESTABLISHING PUBLIC INLAND LAKE PROTECTION AND REHABILITATION DISTRICT

WHEREAS, on December 10, 1974, a verified petition was filed with the Eau Claire County Clerk requesting estab-

Motion Call 839 2984

LAKE ALTOONA LAKE REHABILITATION DISTRICT
BOARD OF COMMISSIONERS

IN RE: The Detachment of

Michael Allen

ORDER OF DETACHMENT
§33.33(3), Wis. Stats.

Upon the Motion of the Lake District Board of Commissioners at a meeting of said Board on October 15, 2007, the real estate situated in the Lake District as of the time of said motion and owned by Michael Allen is hereby ordered to be detached from the Lake District in accord with §33.33(3), Wis. Stats.

Dated this 19 day of October, 2007.

**LAKE ALTOONA LAKE REHABILITATION
DISTRICT BOARD OF COMMISSIONERS**

By: *Lisa M. Schuetz*

Lisa Schuetz, Chairperson

Commission

SUMMARY

The Board's action in denying petitioners' request to have their property detached from the Lake Altoona Lake Rehabilitation District was arbitrary and represented its will and not its judgment. In addition, the record of proceedings before the Board shows there was no evidence upon which the Board could reasonably make the determination denying the petitions for detachment.

FINAL ORDER

For the reasons set forth above,

IT IS HEREBY ORDERED:

1. All of the petitions for detachment are remanded back to the Board of Commissioners of the Lake Altoona Lake Rehabilitation District, and
2. The Board shall immediately grant petitioners' requests and detach their parcels from the Lake Altoona Lake Rehabilitation District.

Dated this 18th day of July 2007.

BY THE COURT:

William M. Gabler Sr.

William M. Gabler, Sr.
Circuit Court Judge, Branch 3

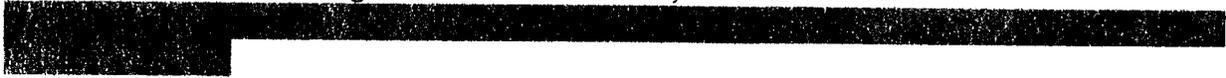
cc Dean R. Dietrich
William G. Thiel

06 20 13

Lake Altoona Rehabilitation District Detachment Hearings

NAME DECISION	ADDRESS	DATE OF HEARING	
1. Randy and Julie Harelstad Approved, 2/23/06	6928 S. Shore Altoona, WI 54720	Feb. 22, 2006	
2. Westerberry Family Trust Denied, 2/23/06	6101 North Shore Dr EC, WI 54703	Feb. 22, 2006	
3. David and Susan Rowe Denied, 2/23/06	920 Lake Rd Altoona, WI 54720	Feb. 22, 2006	
4. James and Donna Morgan Approved, 3/13/06	6850 S. Shore Dr Altoona, WI 54720	Feb. 22, 2006	
5. Melinda Bauer Approved, 1/23/06	7841 Elayne Dr EC, 54701	Feb. 23, 2006	
6. Jeff Rasmussen SHOW denied,	2027 Moonlight Bay Altoona, WI 54720	Feb. 23, 2006	NO
7. James and Doris Kolmer Approved, 3/13/06	1904 Lake Rd Altoona, WI 54720	March 13, 2006	
8. Stanley Schalko Property, denied	544 Lake Rd Altoona, WI 54720	March 13, 2006	Sold
9. Yee Tak Ngan Approved, 3/13/06	544 Lake Rd Altoona, WI 54720	March 13, 2006	
10. Chelsea Engen Motioned out 10/15/07	1020 Lake Rd, Altoona, WI 54820		
11. Mark and Susan Hagen Motioned out 10/15/07 **NO SHOWED, but we knew he was out of town**	7816 Elayne Dr EC, WI 54701		
12. Randel and Marilyn McMartin Motioned out 2/22/06	7131 North Shore Dr EC, WI 54703		
13. Greg Hearden Motioned out 10/15/07	702 Rork Ave EC, WI 54703		
14. Julie and William Ecklund Motioned out 2/22/06	651 Indian Hills		
15. Ted and Karen Peters Motioned out 10/15/07	7131 S. Shore Altoona, WI 54703		

16. William and Carol Hagmann 436 S Beach Dr Altoona, WI 54720
Motioned out 10/15/07

17. Michael and LaVonne Winget 695 Lake Rd Altoona, WI 54720


18. Michael Allen 7734 Elayne EC, WI 54701
Motioned out 10/15/07
Cancelled by Lawyer

19. Nancy Walker 728 Lake Rd Altoona, WI 54720
Motioned out 10/15/07
Cancelled by Lawyer

20. Charles Hotvedt 536 S. Beach Dr. Altoona, WI 54720
Motioned out 10/15/07
Cancelled by Lawyer

21. Brad and Brenda Bowe 6421 S. Shore Dr. Altoona, WI. 54720
Motioned out 10/15/07

22. Michael and Janet Sutherland _____ Lake View Terrace (not sure of their LARPD address
Motioned out 10/15/07
(mailing address for them is 1146 Lakeview Dr. Eau Claire, WI 54701)

23. Don and Judy Wolf 4293 N. Shore Dr. Eau Claire, WI 54703
Motioned out 10/15/07

24. Jeff and Fawn Rasmussen 2027 Moonlight Bay Dr. Altoona, WI 54720
Motioned out 10/15/07

Lake Altoona District
Board Meeting
March 14, 2016

Board Members Present: Paul Johnson, Greg Kotecki, Steve Toperzer, Doug Kranig
Members Absent: Bruce Willett

The meeting was called to order by Chairman Johnson at 5:41 pm.

Public Input: None

Approval of minutes:

The minutes of the February 8, 2016 meeting were presented by Kotecki. A motion to approve was made by Kranig. Second by Johnson. Motion carried.

The minutes of the February 12, 2016 meeting were presented by Kotecki. A motion to approve was made by Johnson. Second by Toperzer. Motion carried.

The minutes of the February 21, 2016 meeting were presented by Kotecki. A motion to approve as amended was made by Kranig. Second by Toperzer. Motion carried.

Approve Payables:

The current payables were presented by Toperzer. This included Beaver Creek, Weld Reiley, Ayres, Haas sons and the Arnold property access. A motion to approve was made by Johnson. Second by Kotecki. Motion carried.

FY2015 audit:

Toperzer stated that the Treasurer for Eau Claire County, Glenda Lyons, as agreed to complete our 2015 audit. Toperzer has supplied her with all necessary documents and she is in the process of completing this audit.

Fisheries Update:

Kotecki stated that the fishery group has held two meetings. The group is trying to secure written permissions from district residents to install fish structures. These permissions are required prior to submitting an application for permitting with the DNR. The process is moving forward slower than anticipated. There will be another fishery meeting in April to check on progress. The group may try using the next door site to speed this up.

Eau Claire River and 5 mile creek delta dredge project:

Haas sons has completed the delta dredge project. They removed a total of 214,091 cubic yards of sediment. The project estimate was for 186,000 yards. They are in the process of finishing demobilization. They will continue to work with Ayres to wrap up any remaining details.

Other business:

Johnson obtained a map from Eau Claire County showing all the properties that are currently in the Lake Altoona District. There are two properties that have frontage on the Eau Claire River but are not currently being taxed. These are a property owned by Melanie Hagen, comp#024200610000, and a property owned by Micheal and Christine Allen, comp#024200605000. A motion to attach these properties to the district was made by Johnson. Second by Kotecki. Motion carried.

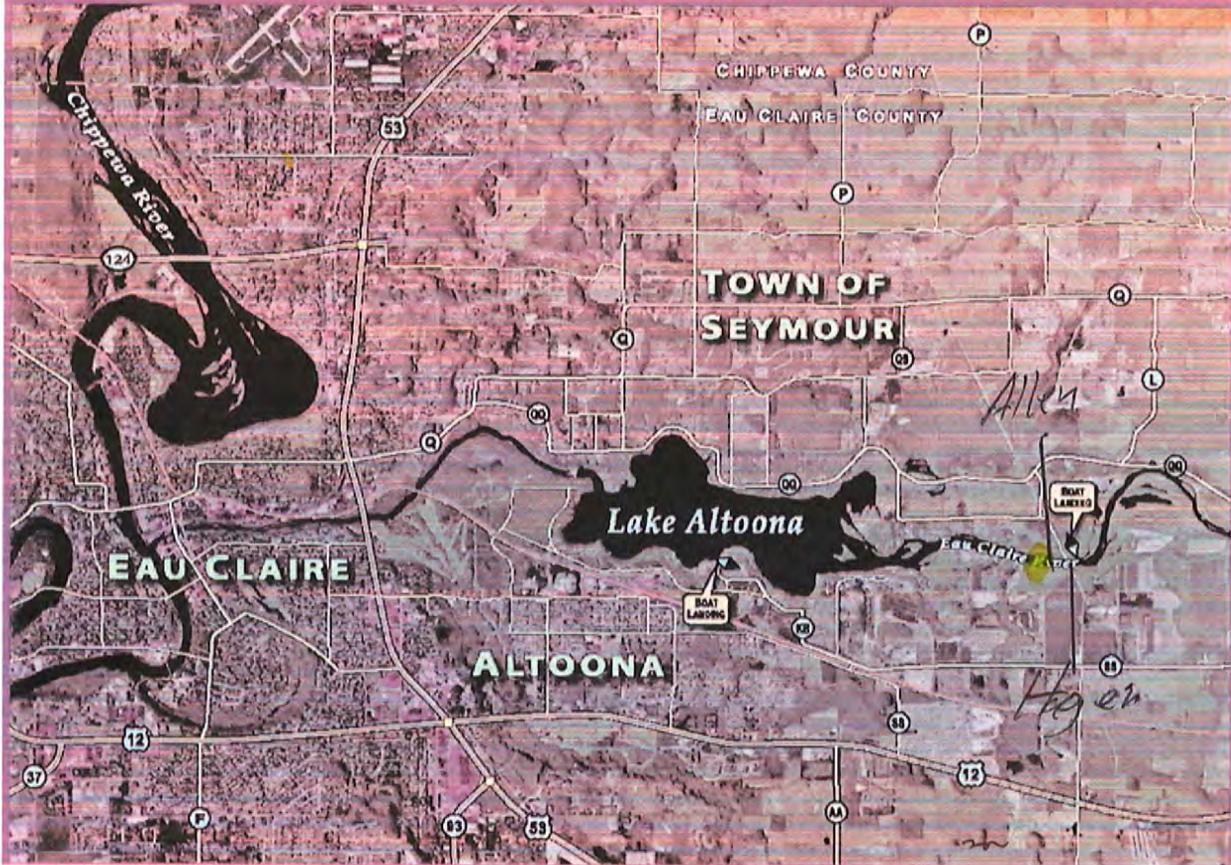
Our sand hauling dispute with American Express Transport does not have a court date set.

Our next board meeting was tentatively scheduled for April 18th.

This Map was Funded by a Grant From the
WISCONSIN DEPARTMENT
OF NATURAL RESOURCES, and the
LAKE ALTOONA PROTECTION
AND REHABILITATION DISTRICT

LAKE ALTOONA

DPS Symbiotic Survey
and Map Production by
SEAN HARTWETT, GEOGRAPHER
UNIVERSITY OF WISCONSIN - EAU CLAIRE



To Be Published: Tuesday, May 10, 2016 and Tuesday, May 17, 2016

LEGAL NOTICE

Public notice is hereby given to all persons in Eau Claire County that the Committee on Planning and Development will hold a public hearing on Tuesday, May 24, 2016 - 7:00 PM at the Eau Claire County Courthouse, in Room 1277, 721 Oxford Ave, Eau Claire, Wisconsin. Subject to the following matters:

- a. A conditional use permit request to construct additions to accessory structures where the cumulative square footage will exceed 1,200 square feet in the RH Rural Homes District. Owner/Applicant: Gregg Slowik. Legal Description: PRT NW-SW BG 1175.1' E OF W 1/4 COR SEC 2 TN S0*05'W 24.75' TO POB TN S0*05'W 417.4' TN N89*55'W 129' TN N0*05'E 417.4' TO S LN OLD HWY 85 TN S89*55'E 129' TO POB in Section 2, T26N-R10W, Town of Brunswick, Eau Claire County, Wisconsin. Site Address: W 3831 Service Road, Eau Claire. CUP-0006-16
- b. A conditional use permit request to construct an accessory structure in excess of 1,200 square feet in the RH Rural Homes District. Owner: John & Laura Menard. Applicant: Steen Construction. Legal Description: SW-NW in Section 24, T27N-R10W, Town of Union, Eau Claire County, Wisconsin. Site Address: 2828 W Menomonie Street, Eau Claire. CUP-0005-16
- c. File No. 16-17/009 regarding the following amendments to the Eau Claire County Code:
 - To Amend Section 18.27.020 D. and F. of the Code: General Regulations
- d. A petition for the attachment of two properties to the Lake Altoona District, Town of Washington, Eau Claire County, Wisconsin. The boundaries of the proposed attachments to the Lake Altoona District are as follows:
 - Michael K. and Christine L. Allen, Lots 3 & 4, Block 2, Lake View Addition – Tax Parcel 024-2006-05-000. Site Address: 7734 Elayne Drive, Eau Claire
 - Melanie A. Haugen, Lot 8, Block 2, Lake View Addition – 024-2006-10-000. Site Address: 7816 Elayne Drive, Eau ClaireAll of the described lands are located in part of the Town of Washington, Eau Claire County, Wisconsin.

Full application materials, maps, and legal descriptions for the public hearing(s) are available in the Eau Claire County Planning and Development Office, or on the Eau Claire County Website: <<http://www.co.eau-claire.wi.us>>. Select *Departments >> Planning and Development >> Public Hearings*.

COPY

May 2, 2016

RECEIVED
MAY - 4 2016
CORPORATION COUNSEL

Eau Claire County Board
Mr. Gregg Moore, County Board Chair
721 Oxford Ave.
Eau Claire, WI 54703

RE: Lake Altoona Motion for Attachment

Dear Mr. Moore,

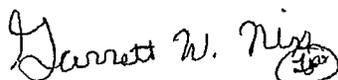
Please find enclosed a Motion and Order for Attachment which was executed by the Lake Altoona District pursuant to s. 33.33(2)(b), Wis. Stat.. Pursuant to section 33.33, a copy of the motion to attach is being forwarded to you to present to the Eau Claire County Board. The County Board is required to appoint a committee, hold a public hearing, and ultimately make a decision on the attachment. Please note that it is my interpretation that Wis. Stat. s. 33.26 requires that a committee be appointed to conduct a hearing, and that such hearing is to occur within 30 days of the County being presented with the enclosed motion. I only point this out for information purposes, as I suspect that the County does not deal with attachment petitions on a regular basis.

As is required by Wis. Stat. s. 33.33(2)(b), a copy of this letter is also being sent to Melanie A. Hagen.

Please contact me if you have any questions or concerns.

Sincerely,

WELD RILEY, S.C.


Garrett W. Nix

GWN/tlo

Enclosure

cc: Eau Claire County Corporation Counsel (w/enclosure)
Eau Claire County Clerk, Janet Loomis (w/enclosure)
Melanie A. Hagen (w/enclosure)
Chairman Paul Johnson (w/enclosure)

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**LAKE ALTOONA DISTRICT
BOARD OF COMMISSIONERS**

IN RE: Attachment Motion of
 Lake Altoona District

**MOTION FOR ORDER
OF ATTACHMENT
§33.33(2)(b), Wis. Stats.**

Upon the basis of an agenda item discussed at a regular meeting of the Lake Altoona District Board meeting on March 14, 2016, regarding the matter of attachment of certain contiguous property to the Lake Altoona District, the Board hereby moves to attach certain property owned by Melanie A. Hagen, a certain property owned by Michael K. and Christine L. Allen, to the Lake District, which property is described in Exhibit "A" hereto.

A copy of the agenda minutes from the March 14, 2016 meeting is attached as Exhibit "B", hereto.

Dated this 13 day of April, 2016.

LAKE ALTOONA DISTRICT BOARD OF COMMISSIONERS

By: 
Paul Johnson, Chairperson

EXHIBIT "A"

Michael K. Allen and Christine L. Allen Property

Lots 3 and 4, Block 2, Lake View Addition to the Town of Washington, Eau Claire County, Wisconsin.

Computer No. 024200605000
PIN: 1802422708202402004

Melanie A. Hagen Property

Lot 8, Block 2, Lakeview Addition to the Town of Washington, Eau Claire County, Wisconsin.

Computer No. 024200610000
PIN: 1802422798202402008

**LAKE ALTOONA DISTRICT
BOARD OF COMMISSIONERS**

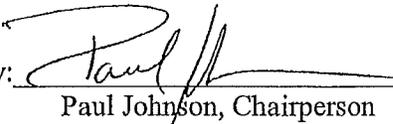
IN RE: Detachment Petition of
Park Ridge Builders of Wisconsin, Inc.

**ORDER OF DETACHMENT
§33.33(3), Wis. Stats.**

Upon the basis of an agenda item discussed at a regular meeting of the Lake Altoona District Board meeting regarding the matter of the Detachment Petition submitted by Park Ridge Builders of Wisconsin, Inc., held on February 3, 2016, by the Lake Altoona District Board of Commissioners, the Board hereby approves of the Detachment of the property owned by the said Park Ridge Builders of Wisconsin, Inc. from the Lake District, which property is described in Exhibit "A" hereto.

Dated this 13 day of April, 2016.

LAKE ALTOONA DISTRICT BOARD OF COMMISSIONERS

By: 
Paul Johnson, Chairperson



WELD RILEY

EAU CLAIRE
BLACK RIVER FALLS
MENOMONIE

COPY

May 3, 2016

RECEIVED
MAY - 4 2016
CORPORATION COUNSEL

Eau Claire County Board
Mr. Gregg Moore, County Board Chair
721 Oxford Ave.
Eau Claire, WI 54703

RE: **Lake Altoona Motion for Attachment**

Dear Mr. Moore,

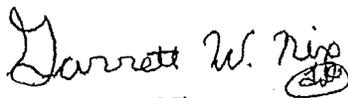
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As is required by Wis. Stat. s. 33.33(2)(b), a copy of this letter is also being sent to Michael K. and Christine L. Allen.

Please contact me if you have any questions or concerns.

Sincerely,

WELD RILEY, S.C.



Garrett W. Nix

GWN/tlo

Enclosure

cc: Eau Claire County Corporation Counsel (w/enclosure)
Eau Claire County Clerk, Janet Loomis (w/enclosure)
Michael K. and Christine L. Allen (w/enclosure)
Chairman Paul Johnson (w/enclosure)

\\wrlacy\PM\Docs\60049.0000\Moore Ltr_20160502.wpd

Weld Riley, S.C. A Wisconsin Limited Liability Entity

EXHIBIT "A"

Lots 4 and 5 of the Subdivision of Lots 1-5 Block 4, Hohman Heights Estates, Town of Washington, Eau Claire County, Wisconsin.

The above described property was formerly known as a part of Lot 2 and the West half of Lot 3, Block 4, Hohman Heights Estates, Town of Washington, Eau Claire County, Wisconsin.

Computer No. 024229205000 and 024229206000
PIN: 1802422708192302010 and 1802422708192302011

**LAKE ALTOONA DISTRICT
BOARD OF COMMISSIONERS**

IN RE: Attachment Motion of
Lake Altoona District

**MOTION FOR ORDER
OF ATTACHMENT
§33.33(2)(b), Wis. Stats.**

Upon the basis of an agenda item discussed at a regular meeting of the Lake Altoona District Board meeting on March 14, 2016, regarding the matter of attachment of certain contiguous property to the Lake Altoona District, the Board hereby moves to attach certain property owned by Melanie A. Hagen, a certain property owned by Michael K. and Christine L. Allen, to the Lake District, which property is described in Exhibit "A" hereto.

A copy of the agenda minutes from the March 14, 2016 meeting is attached as Exhibit "B", hereto.

Dated this 13 day of April, 2016.

LAKE ALTOONA DISTRICT BOARD OF COMMISSIONERS

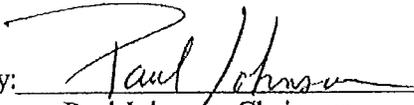
By: 
Paul Johnson, Chairperson

EXHIBIT "A"

Michael K. Allen and Christine L. Allen Property

Lots 3 and 4, Block 2, Lake View Addition to the Town of Washington, Eau Claire County, Wisconsin.

Computer No. 024200605000
PIN: 1802422708202402004

Melanie A. Hagen Property

Lot 8, Block 2, Lakeview Addition to the Town of Washington, Eau Claire County, Wisconsin.

Computer No. 024200610000
PIN: 1802422798202402008

**LAKE ALTOONA DISTRICT
BOARD OF COMMISSIONERS**

IN RE: Detachment Petition of
Park Ridge Builders of Wisconsin, Inc.

**ORDER OF DETACHMENT
§33.33(3), Wis. Stats.**

Upon the basis of an agenda item discussed at a regular meeting of the Lake Altoona District Board meeting regarding the matter of the Detachment Petition submitted by Park Ridge Builders of Wisconsin, Inc., held on February 3, 2016, by the Lake Altoona District Board of Commissioners, the Board hereby approves of the Detachment of the property owned by the said Park Ridge Builders of Wisconsin, Inc. from the Lake District, which property is described in Exhibit "A" hereto.

Dated this 13 day of April, 2016.

LAKE ALTOONA DISTRICT BOARD OF COMMISSIONERS

By: 
Paul Johnson, Chairperson

EXHIBIT "A"

Lots 4 and 5 of the Subdivision of Lots 1-5 Block 4, Hohman Heights Estates, Town of Washington, Eau Claire County, Wisconsin.

The above described property was formerly known as a part of Lot 2 and the West half of Lot 3, Block 4, Hohman Heights Estates, Town of Washington, Eau Claire County, Wisconsin.

Computer No. 024229205000 and 024229206000
PIN: 1802422708192302010 and 1802422708192302011



Eau Claire County
DEPARTMENT OF PLANNING
AND DEVELOPMENT
Eau Claire County Courthouse, Rm. 3344
721 Oxford Avenue
Eau Claire, Wisconsin 54703-5481
(715) 839-4741

Housing & Community Development
839-6240
Emergency Services Management
839-4736
Real Property Description
839-2984
Land Use Controls
839-4743
Building Inspection
839-2944
Land Conservation
839-6226
Planning
839-5055
County Surveyor
839-4742

REPORT:

TO: COMMITTEE ON PLANNING AND DEVELOPMENT

FROM: Jared Grande, Land Use Technician

DATE: July 6, 2016

RE: Nathan Jaenke CSM – Section 02, T27N-R7W, Town of Ludington

Scott C. Kramer, Professional Engineer, has submitted a concept certified survey map (CSM) to the department for review for a two lot CSM in the SW ¼ of the SE ¼ and the SE ¼ of the SE ¼ Section 02, T27N-R7W, Town of Ludington. The property is not zoned.

The map is being presented to the committee because of the unusual lot configuration of lot 1. Lot 1, as shown on the CSM, is considered a flag lot and exceeds the depth to width ratio of 4:1 for lots over 5 acres. The purpose of the division is to create two lots, dividing off and selling the ‘wooded’ portion of the property, according to the narrative.

Section 18.82.060 A of the subdivision code requires that the size, shape, and orientation of lots shall be appropriate for the location of the subdivision and for the type of development and use contemplated.

Section 18.82.060 K. Flag lots. Flag lots shall be prohibited except where necessary to address topographic challenges, respond to existing development patterns, to preserve agricultural land or to minimize land use conflicts.

Section 18.82.060.F. Depth. Lots shall have a minimum average depth of 100 feet. Excessive depth in relation to width shall be avoided. For lots less than 5 acres, the ratio of depth to width shall not exceed 3:1. For lots greater than 5 acres, the ration of depth to width shall not exceed 4:1 inclusive of the road right of way.

Under 18.77.070 of the subdivision control code, the committee can grant variances to Chapters 18.82, 18.83, and 18.84 of the code. The committee must find that there is exceptional or undue hardship in the request; it is not detrimental to the public good, and without impairment to the intent and purpose of the code. The committee must consider all the facts and testimony when deliberating this matter.

STAFF RECOMMENDATION: Staff has reviewed this request and recommends that the committee approve the unusual configuration of the flag lot and exceeding the depth to width ratio. The following reasons may be used to support approving the request:

- The variance will not be detrimental to the public good, the spirit and purpose of the code will be upheld.
- The flag lot and exceeding depth to width ratio preserves agricultural land and the development of the property follows the wooded portion of the property.
- The purpose of the Subdivision Control Code will be upheld.

Kramer Land Design Studio

Civil Engineering • Land Surveying



June 21, 2016

Mr. Jared Grande
Land Use Technician – Eau Claire County
Department of Planning and Development
721 Oxford Avenue, Suite 3344
Eau Claire, Wisconsin 54703

RE: Nathan Jaenke Variance Request

Dear Mr. Grande:

Please accept this concept map showing a proposed land division within the Town of Ludington, Eau Claire County. The owner, Nathan Jaenke, desires to divide the land and sell the 'wooded' portion of the property. Nathan would retain ownership of the agricultural land on the property.

The proposed land division requires a variance due to the unique 'length to width' of the proposed parcel. Please place this item on the agenda for the June 28, 2016 meeting. Thank you.

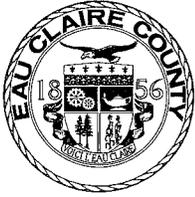
Sincerely,

A handwritten signature in cursive script that reads "Scott C. Kramer".

Scott C. Kramer, PE



NATHAN JAENKE LAND DIVISION CONCEPTUAL CERTIFIED SURVEY MAP EAU CLAIRE COUNTY, WI		JOB NO: 16054 DWG NAME: VARIANCE MAP DATE: 05.27.16 APPR: --/--/--	 KRAMER LAND DESIGN STUDIO 1818 BRACKETT AVENUE • EAU CLAIRE, WI 54701 PH: (715) 851-0654 • FX: (715) 851-6270 • EMAIL: INFO@KLD5.NET
PAGE NO:		1	



Eau Claire County
DEPARTMENT OF PLANNING
AND DEVELOPMENT
Eau Claire County Courthouse, Rm. 3344
721 Oxford Avenue
Eau Claire, Wisconsin 54703-5481
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839-4743
Building Inspection
839-2944
Land Conservation
839-6226
Planning
839-5055
County Surveyor
839-4742

REPORT:

TO: COMMITTEE ON PLANNING AND DEVELOPMENT

FROM: Jared Grande, Land Use Technician

DATE: July 6, 2016

RE: Cheryl C Hawkinson CSM – Section 01, T26N-R7W, Town of Lincoln

Greg Raymond, Professional Land Surveyor, has submitted a concept certified survey map (CSM) to the department for review for a two lot CSM in the NE ¼ of the NE ¼ and the SE ¼ of the NE ¼ Section 01, T26N-R7W, Town of Lincoln. The property is zoned F-2, Forestry.

The map is being presented to the committee because of the unusual lot configuration of lot 2. Lot 2, as shown on the CSM, is considered a flag lot. The purpose of the division is to create two lots, lot 1 to place a home on for the property owner's daughter according to the narrative. The property has also been granted a variance dated August 20, 2002 for the development of the land regarding lot frontage and width requirements for the F-2 District.

Section 18.82.060 A of the subdivision code requires that the size, shape, and orientation of lots shall be appropriate for the location of the subdivision and for the type of development and use contemplated.

Section 18.82.060 K. Flag lots. Flag lots shall be prohibited except where necessary to address topographic challenges, respond to existing development patterns, to preserve agricultural land or to minimize land use conflicts.

Under 18.77.070 of the subdivision control code, the committee can grant variances to Chapters 18.82, 18.83, and 18.84 of the code. The committee must find that there is exceptional or undue hardship in the request; it is not detrimental to the public good, and without impairment to the intent and purpose of the code. The committee must consider all the facts and testimony when deliberating this matter.

STAFF RECOMMENDATION: Staff has reviewed this request and recommends that the committee approve the unusual configuration of the flag lot. The following reasons may be used to support approving the request:

- The variance will not be detrimental to the public good, the spirit and purpose of the code will be upheld.
- The flag lot conforms to the approved variance dated August 20, 2002.
- The purpose of the Subdivision Control Code will be upheld.

July 1,2016

Hi All,

I am requesting a subdivision variance for a flag lot.

In 2002 I applied for well & sewer permits and put them in on the front 25.85 acreage.

In 2002 I was granted a variance to divide the front 28.85 acres up the center of the driveway.

I would like to put a home on the front 20 of the 25.85 acres for my daughter.

My existing home is in the back 40 acres.

The flag lot would account for the remaining 5.85 acres in the road front parcel & also secure access to the back 40 by not allowing either the back 40 or the remaining front (5.85 acres) to be sold to separate parties and land locking the back 40 acres.

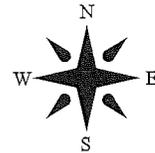
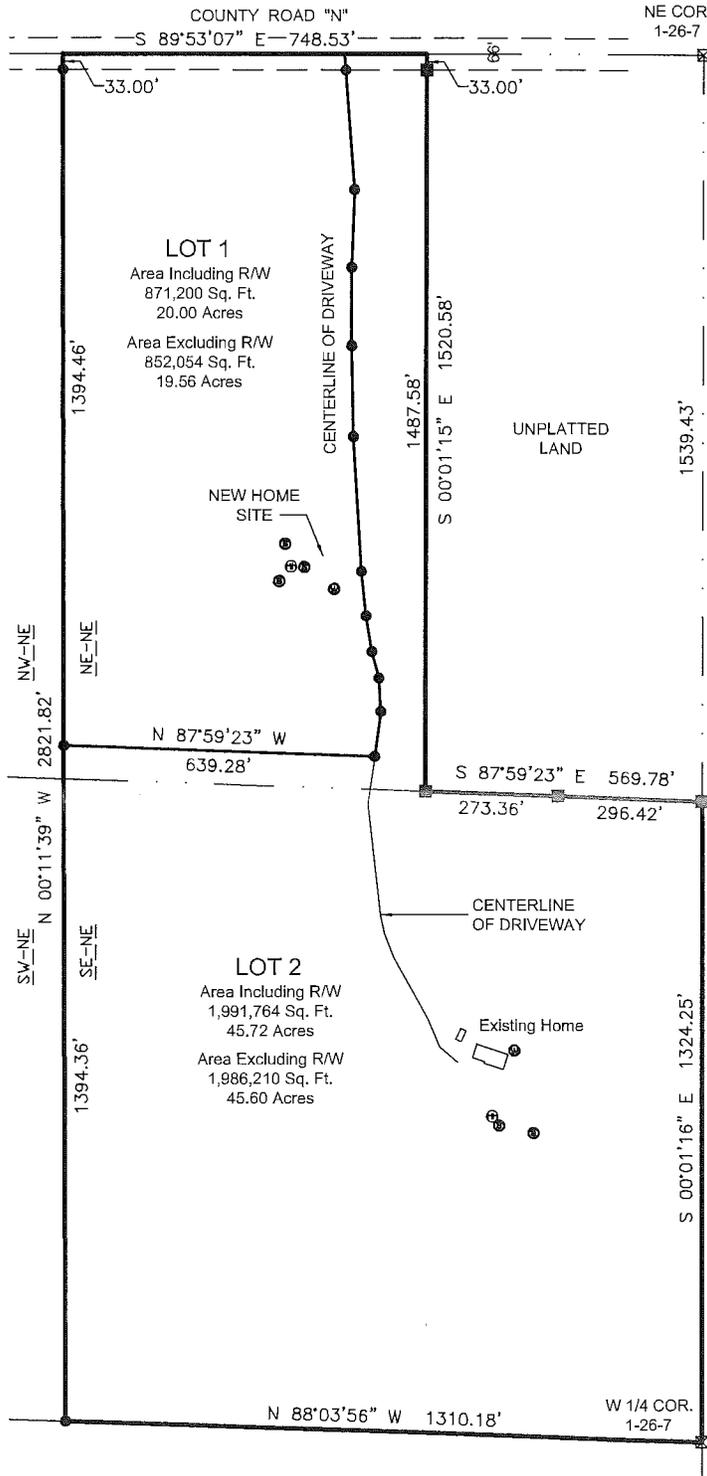
Thank you for your time.

Cheryl Hawkinson

715-271-4334

CERTIFIED SURVEY MAP

Part of the NE 1/4 of the NE 1/4 and all of the SE 1/4 of the NE 1/4, Section 1, T26N, R7W, Town of Lincoln, Eau Claire County, Wisconsin.



Bearings are referenced to the East line of the Northeast Quarter of Section 1 which is assumed to bear S00°01'16"E.

LEGEND

- SET 3/4" x 18" IRON REBAR, 1.50 LBS. LIN. FT.
- FND. 1" O.D. IRON PIPE
- ☒ FND. E.C. CO. ALUM. MON.
- ⊙ WELL
- ⊕ MANHOLE
- ⊙ SEPTIC VENT

RAYMOND SURVEYING, LLC
 W19343 Hwy 10
 Strum, WI 54770
 www.raymond-surveying.com



18012-A-260701-110-0002

Eau Claire County
DEPARTMENT OF PLANNING
AND DEVELOPMENT
Eau Claire County Courthouse, Rm. 1510
721 Oxford Avenue
Eau Claire, Wisconsin 54703-5481
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839-4743
Building Inspection
839-2944
Land Conservation
839-6226
Planning
839-5055

EAU CLAIRE COUNTY BOARD OF LAND USE APPEALS
NOTIFICATION OF ACTION ON REQUEST FOR VARIANCE

Dear Cheryl Hawkinson, E17855 County Road N, Fall Creek WI 54742, Owner/Applicant, at the August 20, 2002 Board of Land Use Appeals meeting your request for a variance for placement of a second principal structure on a lot in the F2 District, was denied, but was amended to grant a variance to the minimum lot width and frontage requirements for the F-2 District. The motion to approve the width and frontage variance was conditioned on the common lot line to follow the existing center line of driveway.

A certified survey map is required.

A complete record of the hearing and the decision of the Board is available for your inspection at the Department of Planning and Development, Eau Claire County Courthouse, 721 Oxford Avenue, Eau Claire, Wisconsin. If copies are desired, they may be secured upon request and payment of transcription costs.

If decision reversed, the Land Use Controls Administrator has been informed of our decision and has been ordered to issue a permit as requested.

If decision modified, the Land Use Controls Administrator has been informed of our decision and has been ordered to issue a permit as requested subject to the above modifications.

The findings of the Board of Land Use Appeals are subject to circuit court review if filed within 30 days of receipt of this official notification of action. Legal representation should be contacted to determine the proper procedures for filing with the court.

8-20-02
Date

Randall L. Hutzman, Chairperson
Board of Land Use Appeals

Cheryl Hawkinson Variance Request – August 20, 2002

*Tom Hanson:

So I would make the motion that we go along with staff recommendation and deny this request and I think she's got enough information to understand how she proceeds if she wants to actually make this happen.

*Bob Hevey:

I'll second.

*Randall Stutzman:

Ok. It's been moved and seconded to deny the request. All those in favor signify by saying "aye."

*Voices:

"Aye"

*Stutzman:

Opposed? Abstain? Motion to deny passes 4-0-0.

And, Ms. Hawkinson, I would suggest that you would be in contact with the Department on Planning & Development as you go forward on this. Make sure that all the i's are dotted and the t's are crossed.

*Richard DeVriend:

If you, let me state it this way. (can't understand) your motion and I was reading something else, but if you do not make a motion to grant a variance for a lesser than a minimum, she will have to come back before you again because what you motioned, if you just motion to deny, she has to apply for a variance, a secondary.

*Stutzman:

Ok, ok. That's an interesting point. Ok.

*Hanson:

Well then I would modify my motion so that she avoids the second, that's really what it would accomplish, right? A second application?

*DeVriend:

Yeah, your motion should be to deny the two principal uses on the property, but to grant a variance to the minimum lot width and frontage such that the future property line follows the existing driveway.

*Hanson:

Ya got that, Barb? That's my motion.

*Hevey:

I'll still second.

*Stutzman:

Ok. And just for clarification, all those in favor of the amended statement signify by saying "aye".

*Voices:

"Aye"

*Stutzman:

Opposed? Abstain? Motion passes 4-0-0.

EAU CLAIRE COUNTY BOARD OF LAND USE APPEALS STAFF ANALYSIS AND
RECOMMENDATIONS - VAR2002-07

DATED PREPARED: August 15, 2002

PUBLIC HEARING DATE: August 20, 2002

PROPERTY OWNER: Cheryl C Hawkinson, E17855 Cnty Rd N, Fall Creek, WI 54742

PETITIONER: Same

PROPERTY DESCRIPTION: Part of the NE1/4-NE1/4, Section 1, T26N-R7W, Town of Lincoln

PARCEL SIZE: 60 Acres

ZONING DISTRICT: F-2 Forestry

REQUEST: The request is to allow a second residence on a lot.

ADJACENT LAND USE AND ZONING:	<u>ZONING</u>	<u>LAND USE</u>
	NORTH: Unzoned	Agriculture
	WEST: F-2	Agriculture
	SOUTH: F-2	Forested
	EAST: F-2	Large lot residential

BACKGROUND:

ANALYSIS: Chapter 18.31 of the zoning code establishes the Board of Land Use Appeals and its authority. Variances granted by the Board of Land Use Appeals are required to meet the seven standards as defined by the code. The Board must find that do to literal enforcement of the code an "unnecessary hardship would result. Unnecessary hardship is defined as an unusual or extreme decrease in the adaptability of the p0roperty to the uses permitted by the zoning district, caused by such facts such as rough terrain or soil conditions uniquely applicable to the property and not generally other properties in the same zoning district.

The specific standards for granting a variance are found in Section 18.31.020 of the zoning code. These are summarized below including staff analysis of this particular request.

CODE	COMMENT:
1. It is the burden of the applicant to prove a hardship exists.	1. There is no hardship because there exists a residence on the property.
2. The request cannot be for a self-imposed hardship.	2. It is self-imposed because the sanitary system was installed prior to issuance of a permit.
3. The request must be unique to the parcel such as steep slopes, shallow parcel, or other actions not caused by the applicant.	3. It would not be unique because of topographic conditions on the property. The claim of mis-information from the office is not a valid condition for approval.
4. The hardship must apply to the subject property or structure and not generally to other properties.	4. It could apply to other properties that can not be subdivided.
5. The request cannot allow a use variance.	5. It is a use variance because it would allow two uses on one property.
6. The request cannot be	6. It would not be detrimental to other properties.

2

detrimental to adjacent properties.

7. The request must grant the minimum necessary to grant relief and cannot be in conflict with the spirit of the zoning code, nor violate state law or administrative order.

8. The request cannot permit any changes to flood elevations or profiles or act as amendment to the floodplain code.

8. It is contrary to the spirit and intent of the code to allow one principal use on a lot.

9. N/A

STAFF RECOMMENDATIONS:

Staff recommendation is for denial because the variance request does not meet the hardship requirement for a variance because there is reasonable use of the property and the request is contrary to the spirit and intent of the code to have one principal use per lot.

2017-2021 Capital Outlay Requests Summary

Planning & Development	Ranking	Total Cost	County Funding	Amount	Admin.	F&B Comm	County Board	
2017 Capital Outlay Requests								
Aerial Photos	1	\$75,000	Bonds/Levy	\$75,000				
Notice of Discharge Projects (LCD) (grants)	2	\$30,000	N/A	-				
Network Rover Station	3	\$15,000	Bonds/Levy	15,000				
Comprehensive Code Revision	4	\$50,000	Levy	50,000				
Recycling drop-off bins (enterprise fund)	5	\$26,350	Enterprise Fund	-				
Hydrographic Survey	6	\$6,500	Bonds/Levy	\$6,500				
Eau Claire River Watershed (grant)	7	\$240,000	Bonds/Levy	50,000				
Lake Rehabilitation Funding (note comments)	8	\$300,000	Bonds/Levy	150,000				
Groundwater Management Planning	9	\$100,000	Bonds/Levy	\$50,000				
Stewardship Acquisitions	10	\$100,000	N/A	-				
Planning & Development Subtotals		\$842,850		\$396,500	\$	\$	\$	-
2018 Capital Outlay Requests								
Notice of Discharge Projects (LCD) (grants)	1	\$30,000	N/A	-				
Recycling drop-off bins (enterprise fund)	2	\$26,350	Enterprise Fund	-				
LCD Truck Replacement	3	\$27,000	Bonds/Levy	\$15,000				
Eau Claire River Watershed (grant)	4	\$200,000	Bonds/Levy	50,000				
Lake Rehabilitation Funding (note comments)	5	\$200,000	Bonds/Levy	\$100,000				
Mobile Command Post	6	\$150,000	Bonds/Levy	\$150,000				
Stewardship Acquisitions	7	\$100,000	N/A	-				
Planning & Development Subtotals		\$733,350		\$315,000	\$	\$	\$	-
2019 Capital Outlay Requests								
Notice of Discharge Projects (LCD) (grants)	1	\$30,000	N/A	-				
Survey Total Robotic Station	2	\$25,000	Bonds/Levy	\$25,000				
Recycling drop-off bins (enterprise fund)	3	\$26,350	Enterprise Fund	-				
Eau Claire River Watershed (grant)	4	\$200,000	Bonds/Levy	\$50,000				
Lake Rehabilitation Funding (note comments)	5	\$200,000	Bonds/Levy	\$100,000				
Stewardship Acquisitions	6	\$100,000	N/A	-				
Planning & Development Subtotals		\$581,350		\$175,000	\$	\$	\$	-
2020 Capital Outlay Requests								
Aerial Photos	1	\$75,000	Bonds/Levy	\$75,000				
LiDAR Data with Aerial Photo	2	\$75,000	Bonds/Levy	\$75,000				
Notice of Discharge Projects (LCD) (grants)	3	\$30,000	N/A	-				
Recycling drop-off bins (enterprise fund)	4	\$26,350	Enterprise Fund	-				
Eau Claire River Watershed (grant)	5	\$200,000	Bonds/Levy	\$50,000				
Lake Rehabilitation Funding (note comments)	6	\$200,000	Bonds/Levy	\$100,000				
Stewardship Acquisitions	7	\$100,000	N/A	-				
Planning & Development Subtotals		\$706,350		\$300,000	\$	\$	\$	-
2021 Capital Outlay Requests								
Notice of Discharge Projects (LCD) (grants)	1	\$30,000	N/A	-				
Recycling drop-off bins (enterprise fund)	2	\$26,350	Enterprise Fund	-				
LCD Truck Replacement	3	\$30,000	Bonds/Levy	\$16,000				
Survey Truck Replacement	4	\$27,000	Bonds/Levy	\$21,000				
Eau Claire River Watershed (grant)	5	\$200,000	Bonds/Levy	\$50,000				
Lake Rehabilitation Funding (note comments)	6	\$200,000	Bonds/Levy	\$100,000				
Groundwater Management Planning	7	\$20,000	Levy	\$10,000				
Stewardship Acquisitions	8	\$100,000	N/A	-				
Planning & Development Subtotals		\$633,350		\$197,000	\$	\$	\$	-

2022-2026 Capital Outlay Requests Summary

Planning & Development	Ranking	Total Cost	County Funding	Amount	Admin.	F&B Comm	County Board	
2022 Capital Outlay Requests								
Notice of Discharge Projects (LCD) (grants)	2	\$30,000	N/A	-				
Recycling drop-off bins (enterprise fund)	5	\$13,150	Enterprise Fund	-				
Survey Truck Replacement	4	\$27,000	Bonds/Levy	\$21,000				
Eau Claire River Watershed (grant)	6	\$200,000	Bonds/Levy	50,000				
Lake Rehabilitation Funding (note comments)	7	\$200,000	Bonds/Levy	100,000				
Stewardship Acquisitions	9	\$100,000	N/A	-				
Planning & Development Subtotals		\$570,150		\$171,000	\$	\$	\$	-
2023 Capital Outlay Requests								
Aerial Photos	1	\$75,000	Bonds/Levy	\$75,000				
Notice of Discharge Projects (LCD) (grants)	1	\$30,000	N/A	-				
Recycling drop-off bins (enterprise fund)	2	\$13,150	Enterprise Fund	-				
Eau Claire River Watershed (grant)	4	\$200,000	Bonds/Levy	50,000				
Lake Rehabilitation Funding (note comments)	5	\$200,000	Bonds/Levy	\$100,000				
Stewardship Acquisitions	7	\$100,000	N/A	-				
Planning & Development Subtotals		\$543,150		\$225,000	\$	\$	\$	-
2024 Capital Outlay Requests								
Notice of Discharge Projects (LCD) (grants)	1	\$30,000	N/A	-				
Network Rover Station	2	\$15,000	Bonds/Levy	\$15,000				
Recycling drop-off bins (enterprise fund)	3	\$13,150	Enterprise Fund	-				
LCD Truck Replacement	3	\$30,000	Bonds/Levy	\$16,000				
Eau Claire River Watershed (grant)	4	\$200,000	Bonds/Levy	\$50,000				
Lake Rehabilitation Funding (note comments)	5	\$200,000	Bonds/Levy	\$100,000				
Stewardship Acquisitions	6	\$100,000	N/A	-				
Planning & Development Subtotals		\$588,150		\$181,000	\$	\$	\$	-
2025 Capital Outlay Requests								
Notice of Discharge Projects (LCD) (grants)	5	\$30,000	N/A	-				
Recycling drop-off bins (enterprise fund)	3	\$13,150	Enterprise Fund	-				
Lake Rehabilitation Funding (note comments)	4	\$200,000	Bonds/Levy	\$100,000				
Eau Claire River Watershed (grant)	6	\$200,000	Bonds/Levy	\$50,000				
Groundwater Management Planning	7	\$20,000	Levy	\$10,000				
Stewardship Acquisitions	7	\$100,000	N/A	-				
Planning & Development Subtotals		\$533,150		\$160,000	\$	\$	\$	-
2026 Capital Outlay Requests								
Aerial Photos	1	\$75,000	Bonds/Levy	\$75,000				
LiDAR Data with Aerial Photo	2	\$75,000	Bonds/Levy	\$75,000				
Notice of Discharge Projects (LCD) (grants)	1	\$30,000	N/A	-				
Recycling drop-off bins (enterprise fund)	2	\$13,150	Enterprise Fund	-				
Eau Claire River Watershed (grant)	5	\$200,000	Bonds/Levy	\$50,000				
Lake Rehabilitation Funding (note comments)	6	\$200,000	Bonds/Levy	\$100,000				
Stewardship Acquisitions	8	\$100,000	N/A	-				
Planning & Development Subtotals		\$543,150		\$300,000	\$	\$	\$	-

Eau Claire County Capital Improvement Project

PROJECT: <i>Aerial Photography</i>	DEPARTMENT: <i>P&D: Land Records</i>	MANAGER: <i>Dean Roth</i>
PROJECT DESCRIPTION:	<i>Contract services for 648 square miles (entire county) of air photos</i>	
ANALYSIS OF NEED:	<i>Numerous departments, -GIS, Sheriff, Highway, Parks and Forest, Health...- use the aerial photo information available within the GIS. These photos have a useful lifespan of about 3 years for current project planning needs. Website viewers use of these photos tasks ranging from building and development activities to recreation.</i>	
LOCATION:	CHECK ONLY ONE	
	<input type="checkbox"/> Mandatory in year proposed	<input type="checkbox"/> Maintenance
	<input type="checkbox"/> Mandatory within 5 years	<input type="checkbox"/> New Facility or Service
	<input type="checkbox"/> Optional - Saves Money	<input checked="" type="checkbox"/> Replacement
	<input checked="" type="checkbox"/> Optional - Improves service level	
	<input type="checkbox"/> Optional - Reduces overall risk	
ALTERNATIVES CONSIDERED:	<i>Continue using existing air photos, lower pixel value flight (reduced clarity), Use Google Earth</i>	
ONGOING OPERATION EXPENSES:	<i>None</i>	
PREVIOUS ACTIONS:	<i>Data previously gathered in 2013</i>	

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
<i>Aerial photography services, including oblique photos</i>	\$75,000	<i>Sale of air photo information</i>	
TOTAL COST	\$75,000	TOTAL REVENUE	\$0

CAPITAL BUDGET SUMMARY

	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET		\$75,000			\$75,000			\$75,000			\$75,000	\$300,000
REVENUE BUDGET												\$0
NET COUNTY COST / YEAR	\$0	\$75,000	\$0	\$0	\$75,000	\$0		\$75,000	\$0	\$0	\$75,000	\$300,000

Eau Claire County Capital Improvement Project

PROJECT:	Notice of Discharge projects	DEPARTMENT:	P&D - Land Conservatio	MANAGER:	Kelly Jacobs	
PROJECT DESCRIPTION:	These funds are made available for situations that have an urgent need based on their noncompliance status with state performance standards and prohibitions. These are specific sites that, as a result of management choices, there is direct pollution going into our public surface water resources.					
ANALYSIS OF NEED:	Private landowners are eligible for 70% cost-share assistance through the Wisconsin Department of Natural Resources (DNR) Targeted Runoff Management program (TRM, pronounced "trim") Notice of Discharge (NOD) Grants. Sites will be identified and then resources allocated to address the situation as quickly as possible in order to protect soil & water resources in the County. The below dollar amounts are only estimates and will likely change based on actual projects.					
LOCATION:	Eau Claire County-wide	CHECK ONLY ONE			CHECK ONLY ONE	
		Mandatory in year proposed	<input checked="" type="checkbox"/>	Maintenance		
		Mandatory within 5 years		New Facility or Service		
		Optional - Saves Money		Replacement		
		Optional - Improves service level				
		<input checked="" type="checkbox"/> Optional - Reduces overall risk				
ALTERNATIVES CONSIDERED:	State statute requires us (or DNR or DATCP) to offer the cost-share in order to enforce the rules. We could choose to not provide the service, but most counties do fill this role of implementing this program.					
ONGOING OPERATION EXPENSES:	The landowner agree to operate and maintain for a ten year period as well as follow all state performance standards and prohibitions in their signed contract.					
PREVIOUS ACTIONS:	Barnyards and manure storage are both typical practices that have been implemented in Eau Claire County.					

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
Conservation Best Management Practices (BMPs) for problem sites	\$30,000	State (DNR/DATCP) Notice of Discharge funds	\$21,000
		Landowner Cost	\$9,000
TOTAL COST	\$30,000	TOTAL REVENUE	\$30,000

CAPITAL BUDGET SUMMARY

	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$300,000
REVENUE BUDGET	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$300,000
NET COUNTY COST / YEAR	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Eau Claire County Capital Improvement Project

PROJECT: *Survey Grade Network Rover GPS Receiver* **DEPARTMENT:** *P&D: Land Records* **MANAGER:** *Dean Roth*

PROJECT DESCRIPTION: *A survey grade network rover GPS receiver provides realtime coordinate values in the field that can then be imported to GIS base mapped information for more accurate and efficient mapping of land parcels.*

ANALYSIS OF NEED: *The network rover unit will integrate with our terrestrial survey equipment to provide better data integrity from field to map. We currently use a dual receiver survey grade RTK system which requires the use of two receivers to collect a survey position in the field. This system was purchased prior to the development of the WisCORS network and will ultimately cease function. The network rover is a far better replacement unit for this type of data collection as it is less expensive and requires fewer man-hours in the field to initialize and dismantle. We would plan for a 7 year replacement cycle for this item.*

LOCATION:		CHECK ONLY ONE		CHECK ONLY ONE		
			Mandatory in year proposed		Maintenance	
			Mandatory within 5 years	<input checked="" type="checkbox"/>	New Facility or Service	
			Optional - Saves Money	<input checked="" type="checkbox"/>	Replacement	
			Optional - Improves service level			
			Optional - Reduces overall risk			

ALTERNATIVES CONSIDERED: *Rentals, dual receiver replacement (~\$25k), in-office sharing of equipment*

ONGOING OPERATION EXPENSES: *A MIFI unit and potential for subscription WisCORS (to be determined by DOT) service may add ~\$800 per year*

PREVIOUS ACTIONS: *None*

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
<i>Survey Grade Network Rover GPS Receiver, Bipod assembly, firmware, data collector, etc</i>	\$15,000		
TOTAL COST	\$15,000	TOTAL REVENUE	\$0

CAPITAL BUDGET SUMMARY

	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET												\$0
REVENUE BUDGET												\$0
NET COUNTY COST / YEAR	\$0	\$15,000	\$0	\$0	\$0	\$0	\$0	\$0	\$15,000	\$0	\$0	\$0

Eau Claire County Capital Improvement Project

PROJECT: *Comprehensive Zoning Code Update(Title 18)* **DEPARTMENT:** *Planning and Development* **MANAGER:** *Rod Eslinger*

PROJECT DESCRIPTION: *To repeal and create a new Title 18, Zoning Code*

ANALYSIS OF NEED: *The County last conducted a comprehensive zoning code amendment 34 years ago in 1982. Since 1982 the County Zoning Code has been amended by request of the public, town officials, county board membership or the Committee on Planning and Development. The ordinance is outdated and is no longer functional with today's land use needs. The current zoning code requires updating to comply with either federal or state case law. Through the comprehensive zoning update process, the County will be able to align its zoning regulations better with local and county comprehensive plans. The end result will produce a modern zoning code that will facilitate economic development and will reduce complexity.*

LOCATION: <i>Department of Planning and Development</i>		CHECK ONLY ONE	CHECK ONLY ONE
		Mandatory in year proposed	<input checked="" type="checkbox"/> Maintenance
		Mandatory within 5 years	<input type="checkbox"/> New Facility or Service
		Optional - Saves Money	<input type="checkbox"/> Replacement
		<input checked="" type="checkbox"/> Optional - Improves service level	
		<input type="checkbox"/> Optional - Reduces overall risk	

ALTERNATIVES CONSIDERED: *Do nothing.*

ONGOING OPERATION EXPENSES: *Levy expenses for administrative costs*

PREVIOUS ACTIONS: *Periodic code amendments as necessary or as petition by the public, town, county board member or Planning and Development Committee.*

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
<i>Consultant cost associated with the Comprehensive Zoning</i>	\$50,000	<i>Debt service / levy</i>	
TOTAL COST	\$50,000	TOTAL REVENUE	\$0

CAPITAL BUDGET SUMMARY

	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET		\$50,000										\$50,000
REVENUE BUDGET												\$0
NET COUNTY COST / YEAR	\$0	\$50,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$50,000

Eau Claire County Capital Improvement Project

PROJECT:	Recycling Drop-box replacement	DEPARTMENT:	P&D / Recycling	MANAGER:	Amanda Haffele / Matt Michels
PROJECT DESCRIPTION:	Continue replacement of twenty one 22-yard recycling drop-boxes at rural collection sites at 4 per year from 2017-2021 and 2 per year from 2022-2026.				
ANALYSIS OF NEED:	Recycling boxes, that need to be replaced, are 24 years old and are rusting through. Materials fall out of holes while being transported to a recycling center causing litter issues. Weakening welds and rusted hook-ups decrease container strength, therefore creating potentially dangerous containers.				
LOCATION:	Rural recycling drop-off located throughout Eau Claire County.	CHECK ONLY ONE		CHECK ONLY ONE	
		<input type="checkbox"/> Mandatory in year proposed			<input type="checkbox"/> Maintenance
		<input type="checkbox"/> Mandatory within 5 years			<input type="checkbox"/> New Facility or Service
		<input type="checkbox"/> Optional - Saves Money	<input checked="" type="checkbox"/>		<input type="checkbox"/> Replacement
		<input type="checkbox"/> Optional - Improves service level			
		<input checked="" type="checkbox"/>	<input type="checkbox"/> Optional - Reduces overall risk		
ALTERNATIVES CONSIDERED:	There is no financial benefit to repair. Rust and damage is in excess and the cost is too high to repair.				
ONGOING OPERATION EXPENSES:	New recycling signs / labels. Repair any hauling or vehicle damage to bins.				
PREVIOUS ACTIONS:	Bins were never replaced or repaired hence their deteriorated state.				

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
22-yard Recycling Roll - off dumpster	\$6,500	State of Wisconsin Recycling Grant	\$13,175
22-yard Recycling Roll - off dumpster	\$6,500	Recycling Fees	\$13,175
22-yard Recycling Roll - off dumpster	\$6,500		
22-yard Recycling Roll - off dumpster	\$6,500		
Shipping / Freight	\$150		
New Signs/Labels	\$200		
TOTAL COST	\$26,350	TOTAL REVENUE	\$26,350

CAPITAL BUDGET SUMMARY

	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET	\$31,800	\$26,350	\$26,350	\$26,350	\$26,350	\$26,350	\$13,150	\$13,150	\$13,150	\$13,150	\$13,150	\$229,300
REVENUE BUDGET	\$31,800	\$26,350	\$26,350	\$26,350	\$26,350	\$26,350	\$13,150	\$13,150	\$13,150	\$13,150	\$13,150	\$229,300
NET COUNTY COST / YEAR	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Eau Claire County Capital Improvement Project

PROJECT:	Hydrographic Survey Unit	DEPARTMENT:	P&D - Land Conservatio	MANAGER:	Kelly Jacobs
PROJECT DESCRIPTION:	Land Conservation Division staff would utilize this equipment to help monitor progress (and need for maintenance dredging) of sediment traps. This equipment also allows us to map the channel (or lake) bottom and determine volumes of material/sediment at various stretches of the river systems.				
ANALYSIS OF NEED:	This project is by request of Lake Districts (specifically Lake Eau Claire District) and would also be available for use in efforts of the Eau Claire Watershed Coalition. Both Lake Eau CLaire and Lake Altoona (partnering governmental entities) have invested millions of dollars in costs associated with dredging; however, they have more recently installed sediment traps to try and capture sediment in a more controlled way. These will be cleaned out on a regular basis as designed; but, high water flow events can carry exponentially more sediment than normal flows which makes the cleanout date for these sediment traps a somewhat moving target. Continued on next page...				
LOCATION:	For use on river and lake systems throughout the County, as needed/requested.	CHECK ONLY ONE		CHECK ONLY ONE	
		<input type="checkbox"/>	Mandatory in year proposed	<input type="checkbox"/>	Maintenance
		<input type="checkbox"/>	Mandatory within 5 years	<input checked="" type="checkbox"/>	New Facility or Service
		<input type="checkbox"/>	Optional - Saves Money	<input type="checkbox"/>	Replacement
		<input checked="" type="checkbox"/>	Optional - Improves service level	<input type="checkbox"/>	
<input type="checkbox"/>	Optional - Reduces overall risk	<input type="checkbox"/>			
ALTERNATIVES CONSIDERED:	Other options are to contract with an engineering firm hired which costs thousands of dollars (and requires contracts, schedules, etc.) or try to negotiate with schools to do it within their curriculum (subject to their scheduling and funding and not completed on an ongoing/regular basis).				
ONGOING OPERATION EXPENSES:	Potential need for replacement as technology improves (maybe ten years down the road?) if we want to continue the service.				
PREVIOUS ACTIONS:	Volunteer efforts from Rod Zika (prior to creating his consulting company) with basic survey equipment/rods. School groups for special projects on a schedule as determined by them (wildlands school, UWEC, etc.)				

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
Hydrolite SingleBeam Hydrographic Survey Unit	\$6,500	Technical Service Fee (\$50/hr) for LCD staff time (as reimbursed by grants or Districts)	\$0
		In-kind use of boat or kayak	\$0
TOTAL COST	\$6,500	TOTAL REVENUE	\$0

CAPITAL BUDGET SUMMARY												
	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET	0	\$6,500	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,500
REVENUE BUDGET	0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
NET COUNTY COST / YEAR	\$0	\$6,500	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$6,500

Analysis of Need (continued):

In order to assess the need for dredging, bathymetric survey transects will give us a depth reading from which we can estimate capacity following such events. Grants are usually limited when it comes to equipment purchases, but we will attempt to recoup some of this expense by charging technical service fees for our time in operating the equipment (per County Code). This piece of equipment ties into our existing GPS survey equipment nicely and would utilize the existing Verizon data plan that we have as well.



Eau Claire County Capital Improvement Project

PROJECT:	Eau Claire River Watershed Coalition	DEPARTMENT:	P&D - Land Conservatio	MANAGER:	Kelly Jacobs	
PROJECT DESCRIPTION:	Begin Implementation of the strategies as outlined in the Nine-key Element Plan.					
ANALYSIS OF NEED:	The establishment of the Eau Claire River Watershed Coalition will likely define the need and prioritize the implementation strategy. The County will contribute staff time and resources as are available. This is a more comprehensive approach to achieving watershed health and maintenance of property values, with support provided by WDNR, the Army Corp of Engineers, Lake Districts, County Land Conservation offices, and numerous other partners.					
LOCATION:	Eau Claire River Watershed	CHECK ONLY ONE			CHECK ONLY ONE	
		<input type="checkbox"/>	Mandatory in year proposed	<input type="checkbox"/>	Maintenance	
		<input type="checkbox"/>	Mandatory within 5 years	<input type="checkbox"/>	New Facility or Service	
		<input type="checkbox"/>	Optional - Saves Money	<input checked="" type="checkbox"/>	Replacement	
		<input checked="" type="checkbox"/>	Optional - Improves service level	<input type="checkbox"/>		
		<input type="checkbox"/>	Optional - Reduces overall risk			
ALTERNATIVES CONSIDERED:	We each have been doing our part to contribute to improvements in the larger watershed, but we're stronger together.					
ONGOING OPERATION EXPENSES:	Continued work toward implementation of plan strategies is expected for the long term (it is a ten year plan).					
PREVIOUS ACTIONS:	Previously the first plan was created as part of the first joint effort under the Coalition.					

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
Cost-share to Landowners	\$200,000	DNR TRM/ACOE grant	\$150,000
		County Funds (Cost Share match)	\$50,000
Inventory work as outlined in the plan (i.e. sediment delivery 'hot spots', BMP needs, etc)	\$40,000	DNR Grants (River & Lake Planning grants)	\$20,000
		In-kind match from partner entities/landowners	\$20,000
TOTAL COST	\$240,000	TOTAL REVENUE	\$240,000

CAPITAL BUDGET SUMMARY

	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET	\$40,000	\$240,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$2,040,000
REVENUE BUDGET	\$40,000	\$190,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$1,540,000
NET COUNTY COST / YEAR	\$0	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000	\$500,000

Eau Claire County Capital Improvement Project

PROJECT:	Lake Rehabilitation Projects	DEPARTMENT:	P&D - Land Conservatio	MANAGER:	Kelly Jacobs
PROJECT DESCRIPTION:	The Lake Rehabilitation Program has provided County contributions to needed lake management projects in Eau Claire County.				
ANALYSIS OF NEED:	Protecting water quality and lake health is important on it's own right, but it also does result in retained property values (and ultimately tax dollars) along these lakes. This program was established in 1992 and requests are made annually based on expected/anticipated projects as submitted by the Lake Districts or other interested organizations. The 2017 projects listed here are only estimates and the actual projects, as identified and submitted by Lake Districts, will be received by the County on or before June 30, 2016. Continued on next page...				
LOCATION:	Actual final projects (both their locations and their associated costs) are to be determined based on applications received by June 30, 2016.	CHECK ONLY ONE		CHECK ONLY ONE	
		<input type="checkbox"/> Mandatory in year proposed	<input checked="" type="checkbox"/>	Maintenance	
		<input type="checkbox"/> Mandatory within 5 years		New Facility or Service	
		<input type="checkbox"/> Optional - Saves Money		Replacement	
		<input checked="" type="checkbox"/> Optional - Improves service level			
		<input checked="" type="checkbox"/> Optional - Reduces overall risk			
ALTERNATIVES CONSIDERED:	We will continue to look for grants and other fundraisers to help offset the costs. Districts will also determine if existing mill rates are appropriate for work needed.				
ONGOING OPERATION EXPENSES:	The majority of ongoing maintenance work is likely to be covered by Lake Districts and citizen associations (exclusive of dam management). We will continue to partner on implementation of other needs as identified in lake management plans.				
PREVIOUS ACTIONS:	Dredging has historically accounted for the majority of previous funding in this program, but the program has also reimbursed lakes for the creation of sediment traps, habitat work, planning efforts, and other management strategies as identified in approved lake management plans.				

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
Lake Eau Claire - Sediment work and habitat restoration	\$200,000	Grants	\$50,000
Lake Altoona - Lake Management Plan implementation	\$100,000	Lake Eau Claire District	\$25,000
		Lake Eau Claire Association	\$25,000
		Lake Altoona District	\$50,000
TOTAL COST	\$300,000	TOTAL REVENUE	\$150,000

CAPITAL BUDGET SUMMARY

	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET	\$925,000	\$300,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$2,100,000
REVENUE BUDGET	\$500,000	\$150,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$1,050,000
NET COUNTY COST / YEAR	\$425,000	\$150,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$1,050,000

Additional information:

Grants and other funding sources will be searched out and utilized wherever possible to supplement County contributions and are typically acquired by lake districts and associations with the assistance of LCD staff. There are few to no grants available for dredging and sediment removal activity. Additional information is available upon request. "Prior years" information provided on the first page of this request is only for the 2016 projects. The future years are only estimates and are dependent on lake projects planned by those respective groups/organizations/districts. The total in the capital budget summary on the first page is reflective of 2017-2026 estimates only.

2017 REQUEST

<u>Lake</u>	<u>Total Project Cost</u>	<u>County Funds Requested</u>	<u>Amount Funded by Other Sources</u>	<u>Description</u>
Lake Eau Claire	\$ 200,000	100,000	100,000	Habitat work & Sediment Removal 50% District, 25% Association, 25% County
Lake Altoona	\$ 100,000	50,000	50,000	Lake Management Plan Implementation
Coon Fork Lake	\$ -	-	-	
Half Moon Lake	\$ -	-	-	
Fairchild Pond	\$ -	-	-	
Fall Creek Pond	\$ -	-	-	
Elk Creek Lake	\$ -	-	-	
TOTAL	\$ 300,000	\$ 150,000	\$ 150,000	

Eau Claire County Capital Improvement Project

PROJECT: *Groundwater Management Planning & Monitoring* **DEPARTMENT:** *P&D - Land Conservatio* **MANAGER:** *Kelly Jacobs*

PROJECT DESCRIPTION: *A groundwater elevation map will be produced as part of the study and a model may also be developed (expanding upon Chippewa County's current work) to help study and track flow along with potential contamination sources (for both a preventative/planning use as well as an enforcement/public health use).*

ANALYSIS OF NEED: *It is the intention that along with our finalizing of the current Groundwater management plan (approved as a capital request in 2015), which will allow us to be more competitive for grant funds associated with Groundwater map development, this information will then be combined with the nitrate study data, the WellIntel data, groundwater monitoring data associated with the stormwater permitting, and the LiDAR data will be used to develop a "depth to groundwater" map (with data attached) that can be used for the purposes of defining buildable areas and sites with limitations for specific uses for use by County residents as well as for the purposes of Chapter 17 & 18 implementation.*

LOCATION: <i>Eau Claire County-wide</i>		CHECK ONLY ONE	CHECK ONLY ONE
		Mandatory in year proposed	<input checked="" type="checkbox"/> Maintenance
		Mandatory within 5 years	<input type="checkbox"/> New Facility or Service
		Optional - Saves Money	<input type="checkbox"/> Replacement
		Optional - Improves service level	
	<input checked="" type="checkbox"/> Optional - Reduces overall risk		

ALTERNATIVES CONSIDERED: *We could wait for another year if needed which wil allow more time to compile the data being collected. Also could consider in-house creation if staff time allows.*

ONGOING OPERATION EXPENSES: *Continual data compilation from the existing monitoring framework will take some staff time.*

PREVIOUS ACTIONS:

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
Contracted map development	\$100,000	Grant funds or in-kind match from partners (i.e. USGS)	\$50,000
TOTAL COST	\$100,000	TOTAL REVENUE	\$50,000

CAPITAL BUDGET SUMMARY

	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET	\$0	\$100,000	\$0	\$0	\$0	\$20,000	\$0	\$0	\$0	\$20,000	\$0	\$140,000
REVENUE BUDGET	\$0	\$50,000	\$0	\$0	\$0	\$10,000	\$0	\$0	\$0	\$10,000	\$0	\$70,000
NET COUNTY COST / YEAR	\$0	\$50,000	\$0	\$0	\$0	\$10,000	\$0	\$0	\$0	\$10,000	\$0	\$70,000

Eau Claire County Capital Improvement Project

PROJECT: *Land Stewardship Acquisitions* **DEPARTMENT:** *P&D - Land Conservatio* **MANAGER:** *Kelly Jacobs*

PROJECT DESCRIPTION: *The Land Stewardship Program seeks to conserve unique habitats for long term stewardship of the resources as well as to connect people to the land by opening them up for public access.*

ANALYSIS OF NEED: *Options for each property are unique. There have been discussions that include more than just full acquisitions but also consider easements and even things like working alongside partner organizations (i.e. WWLT) on areas with similar goals as determined by the needs and wishes of the landowners while also taking advantage of the strengths and resources of each partner group, Department, and organization. Continued on next page...*

LOCATION: <i>County-wide</i>	CHECK ONLY ONE		CHECK ONLY ONE	
		Mandatory in year proposed	<input checked="" type="checkbox"/>	Maintenance
		Mandatory within 5 years		New Facility or Service
		Optional - Saves Money		Replacement
	<input checked="" type="checkbox"/>	Optional - Improves service level		
	Optional - Reduces overall risk			

ALTERNATIVES CONSIDERED: *We will continue to work with partnering organizations to secure funding and management options for properties.*

ONGOING OPERATION EXPENSES: *This is considered at the time of drafting up agreements or documents. Maintaining private ownership and/or rolling the properties into the County Forest program are being considered for the two properties currently being seriously considered by the program.*

PREVIOUS ACTIONS: *Ongoing operation & management for the one property purchased under the program have been rolled into the Parks program.*

DESCRIPTION OF EXPENSE:	AMOUNT	REVENUE - LIST EACH FUNDING SOURCE	AMOUNT
Easement acquisition on property with unique habitat features in Eau Claire County	\$80,000	<i>Land Stewardship Program Fundraising</i>	\$40,000
		<i>Grants (i.e. Knowles-Nelson)</i>	\$40,000
TOTAL COST	\$80,000	TOTAL REVENUE	\$80,000

CAPITAL BUDGET SUMMARY

	PRIOR YEARS	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	TOTAL
EXPENDITURE BUDGET	\$100,000	\$80,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$980,000
REVENUE BUDGET	\$100,000	\$80,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$100,000	\$980,000
NET COUNTY COST / YEAR	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**Planning and Development
June 2016**

The following bills were sent to the Finance Department for payment:

Planning

Vendor	Amount	Description	Line Item#
Jay's Sign Service	\$ 520.00	Public Notice Sign	51820-200-000
Office Depot	271.64	Office Supplies	51820-310-000
Matt Michels	40.29	Mileage - Regular	51820-330-000
Eau Claire Press	247.99	Public Notice	51820-321-000
Jared Grande	210.40	Mileage - Regular	51820-330-000
Steve Maley	545.05	Mileage - Regular	51820-330-000
Peter Strand	168.30	Mileage - Regular	51820-330-000
Peter Strand	279.00	Mileage - Travel/Training	51820-340-000
Rod Eslinger	47.83	Mileage - Regular	51820-330-000
Matt Michels	33.54	Mileage - Regular	51820-330-000

Resurvey

Vendor	Amount	Description	Line Item#
EC County Highway	96.47	Fuel	51740-241-200

Emergency Management

Vendor	Amount	Description	Line Item#
Michael Morlan	26.01	Mileage - Regular	52410-330-000
Michael Morlan	95.37	Mileage - Training	52410-340-000
Michael Morlan	103.53	Mileage - Regular	52410-330-000
Badger Utility	326.68	Mobile Command repairs	52410-390-000

Recycling

Vendor	Amount	Description	Line Item#
Retzer Nature Center	86.10	Compost Bins	54885-912-000
Boxx Sanitation	22,124.52	Recycling Services - Curbside	54885-201-000
Waste Management	14,807.06	Recycling Services - Curbside	54885-201-000
Advanced Disposal	40,948.18	Recycling Services - Curbside	54885-201-000
Dunn County Solid Waste	2,686.20	Recycling Specialist	54885-912-000
Village of Fairchild	108.80	Dropbox Attendant	54885-208-000
Advanced Disposal	3,192.28	Recycling Services - Dropbox	54885-208-000
Town of Wilson	82.08	Dropbox Attendant	54885-208-000
Waste Management	15,220.80	Recycling Services - Curbside	54885-201-000
ProVyro Waste Services	8,138.90	Recycling Services - Curbside	54885-201-000
EarthBound Environmental Solutions	377.50	Recycling Services - Curbside	54885-201-000

Land Conservation

Vendor	Amount	Description	Line Item#
Valhalla Mgmt Services	750.00	Stewardship program - Franks	57589-200-000
Lake EC Protection & Rehab	28,500.00	Sediment trap cleaning	57415-700-000
Durand Builders	20,500.00	Assurance reimbursemet	23172-000-000
Melvin Seuferer	3,111.15	Cost-Share	57410-200-232
Melvin Seuferer	288.85	Cost-Share	57410-483-229
Dougs Trucking VOID, CHECK CANCELED	2,905.54	Cost-Share	57410-200-232
Dougs Trucking VOID, CHECK CANCELED	492.46	Cost-Share	57410-483-229
University of WI-Steven Point	6,025.92	Watershed, Social Science	57410-200-009
EC Highway Dept	145.50	Fuel	57410-241-000
Dougs Trucking	169.90	Cost-Share	57410-438-229
Dougs Trucking	2,378.60	Cost-Share	57410-200-232

Division	Totals
Planning	2,364.04
Resurvey	96.47
Emergency Management	551.59
Recycling	107,772.42
Land Conservation	65,267.92
Total	110,784.52

Eau Claire County
PLANNING & DEVELOPMENT COMMITTEE MINUTES

Tuesday, June 28, 2016 • 7:00 PM
Eau Claire County Courthouse • 721 Oxford Avenue • Room 1277
Eau Claire, Wisconsin

Members Present: Gary Gibson, Jim Dunning, Gordon Steinhauer, Mark Olson, Stella Pagonis

Members Absent: None.

Staff Present: Rod Eslinger, Matt Michels, Lance Gurney, Beth Richmond

1. Call to Order

Gary Gibson called the meeting to order at 7:00 p.m.

2. Public Input Session: None.

3. Public Hearings:

- a. A conditional use permit request to allow temporary seasonal housing for farm help in the A-P Agricultural Preservation District (Ferguson's Orchard – Town of Washington) CUP-0007-16 / Discussion – Action

Rod Eslinger presented the background and staff report for a conditional use permit to construct temporary seasonal housing in conjunction with an agricultural operation for Ferguson's Morningside Orchard in the Town of Washington. Mr. Eslinger reviewed the application materials, zoning, planned uses, inclusion in farmland preservation, site location, and compliance with applicable code requirements. A short video of the subject property was then presented. Mr. Eslinger then presented the purpose of the existing zoning of the property as part of the Farmland Preservation program, standards to be considered, and staff recommendations to approve the request, noting the Town of Washington's support of the request was conditioned upon additional screening to the east adjacent to Balsam Road. Questions regarding well and dwelling inspections, fire inspections, temporary housing for seasonal help and general information regarding the structure were then discussed. Tom and Andy Ferguson appeared as the applicants to discuss the proposed project. Tom Ferguson discussed difficulty in finding labor to fully harvest the crop annually. He also discussed state permits and inspection requirements for the seasonal labor through the State of Wisconsin. A question was asked regarding additional potential costs for migrant laborers. Andy Ferguson indicated that the orchard will be providing workers compensation, but was not aware of any additional costs or obligations deferred to the County. In terms of fire inspections, the applicant has agreed to annual inspections by the Town Fire Department for the new structures in addition to the other structures on the property. The maximum number of migrant laborers to be housed would be 40, during the fall harvest period which is typically 4-6 weeks. Tom Ferguson provided a detailed account of annual work and timeframes for needed additional labor.

ACTION: Motion by Stella Pagonis to approve the conditional use permit request with applicant working with departmental staff for additional screening and to work with fire department for annual inspections. Motion carried, 5-0.

- b. A conditional use permit request for a planned commercial development in the C-3 Highway Business District (Stafslien – Town of Washington) CUP-0008-16 / Discussion – Action
Rod Eslinger provided background and staff report relating to a request for a planned development permit to allow for multi-uses in conjunction with an existing building zoned for commercial uses off of Kent Avenue in the Town of Washington. No outside storage would be permitted, load off and storage of materials would be restricted to the interior of the existing building. The Town of Washington is supportive of the request as submitted. Staff is able to verify that the standards for the planned commercial development have been met and is recommending approval with eleven staff conditions found on page 25 of the meeting packet. A short video was then presented to the committee members. Any alterations to the building would be determined based on possible tenant needs and not be predetermined. Cyrus Stafslien appeared as the applicant and discussed restrooms within the facility, which were stubbed in to allow three separate areas within the building.

ACTION: Motion by Jim Dunning to approve the conditional use permit request with staff recommendations as presented. Motion carried, 5-0.

- c. **Proposed Ordinance: File No. 16-17/022** “Amending the 1982 Official Zoning District Boundary for the Town of Pleasant Valley” (Helfenstine) RZN-0011-16 / Discussion – Action
Matt Michels and Beth Richmond provided the background and staff report for the request to rezone 40 acres from the A-P zoning district to the A-3 zoning district. The primary reason for the rezone request is to allow for construction of a non-farm residence on the property, which would have been permitted on fallow land under the old A-1 zoning designation. The land is not considered prime farmland. The Town of Pleasant Valley has considered the request and voted in favor of the rezone petition. A short video of the subject property was then presented. Requirements of the Farmland Preservation program were then discussed.

ACTION: Motion by Gordon Steinhauer to approve file 15-16/120. Motion carried, 5-0.

- d. A conditional use permit request to construct a home on a parcel with less than 50 percent of the required area for the A-P Agricultural Preservation District (Peterson – Town of Pleasant Valley) CUP-0009-16 / Discussion – Action
Rod Eslinger provided the background and staff report for a request to construct a new home on a parcel of less than 50 percent of the required area for the A-P Agricultural Preservation district. The residence would be in relation to forestry operations which would be consistent with agricultural uses. Mr. Eslinger reviewed the conditions and standards for a conditional use to allow construction of a residence on a parcel of less than 50% of the required minimum lot size. The Town of Pleasant Valley considered the request and voted in favor of the conditional use permit. Mike Peterson was present as the applicant and indicated intention to construct a residence.

ACTION: Motion by Mark Olson to approve the conditional use permit request with staff recommendations as presented. Motion carried, 5-0.

4. **From May 24, 2016:** A conditional use permit request to construct additions to accessory structures where the cumulative square footage will exceed 1,200 square feet in the RH Rural Homes District (Slowik – Town of Brunswick) CUP-0006-16 / Discussion – Action
This matter was postponed from the previous committee meeting to obtain additional information/clarification from Eau Claire County Corporation Counsel office with regard to the subject property. Gordon Steinhauer made a motion to remove the matter from the table. Motion carried: 5-0. The question at hand was whether the Committee could place conditions or stipulations on the primary residence in conjunction with a request for a conditional use permit request to exceed total area limitations for an accessory structure for a parcel zoned as RH. Corporation Counsel has advised that it would be improper to place conditions or stipulations on a structure for which a permit was not sought. Rod Eslinger verified that staff is recommending denial of the application.

ACTION: Motion by Stella Pagonis to deny the conditional use permit request due to the history of the property and continued violations of previous conditions. Motion carried, 5-0.

5. Review/Approval of Preliminary Plat of Winter Haven in Section 26, T26N-R09W in the Town of Pleasant Valley / Discussion – Possible Action
Rod Eslinger provided the background and staff report for the Winter Haven subdivision plat for 66 residential lots in the Town of Pleasant Valley. The preliminary plat was submitted to the office of Planning and Development on May 27, 2016 and has 60 days to take action. Departmental staff has reviewed the proposed plat and is recommending approval with several conditions noted within the June 21, 2016 staff report. Mr. Eslinger indicated that the applicant has recently submitted a revised Preliminary Plat which may have resolved many of the matters identified in the staff report. In conjunction with the Preliminary Plat, the Committee is also being requested to grant a variance from the length to width restrictions for Lots 25, 50 and 51.

ACTION: Motion by Gordon Steinhauer to approve the preliminary plat of Winter Haven with staff conditions as well as the variances for length to width ratio as indicated. Motion carried, 5-0.

6. **From Addendum:** Amendment to 2016 Recycling Budget / Discussion – Action
Michels presented the background of the request to amend the 2016 recycling budget in light of additional grant revenues restored by the state legislature earlier in 2016. The request submitted proposes to restore critical priorities within the 2016 Recycling program budget, including: remove use of fund balance in 2016; increase funding to meet contractual obligations for drop box charges; add back funding for outreach and marketing to improve public awareness; and finally, replace 4-5 roll-off containers. The recycling program and fund balance were discussed in further detail.

ACTION: Motion by Mark Olson to approve the request as submitted. Motion carried, 5-0.

7. Review of May Bills: No issues or concerns.
8. Review/Approval of May 24, 2016 Meeting Minutes / Discussion – Action

ACTION: Motion by Jim Dunning to approve the minutes as submitted. Motion carried, 5-0.

9. Proposed Future Agenda Items / Discussion
Budget matters will be discussed in July and August.
10. Gary Gibson adjourned the meeting at 9:10 p.m.

Respectfully submitted,

Lance Gurney
Clerk, Committee on Planning and Development