

Bauer, Candace

From: Bauer, Candace
Sent: Wednesday, November 23, 2016 12:45 PM
To: 'Adkins, Sarah J - DNR'
Subject: RE: Wille Beamons - Winnebago County BOA letter

Thank you, Sarah. I will provide this to the BOA for their review.

Respectfully,

Candace Bauer
Code Enforcement Officer
Winnebago County Zoning

Office: 920-232-3344
Email: cbauer@co.winnebago.wi.us

From: Adkins, Sarah J - DNR [mailto:Sarah.Adkins@wisconsin.gov]
Sent: Wednesday, November 23, 2016 12:42 PM
To: Bauer, Candace <CBauer@co.winnebago.wi.us>
Subject: Wille Beamons - Winnebago County BOA letter
Importance: High

Hi Candace,

Attached is my letter to the BOA. If there's anything you want me to add or change before you send it out, let me know, thanks.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Sarah Adkins

Water Management Specialist
Wisconsin Department of Natural Resources
625 E Cty Rd Y Suite 700
Oshkosh, WI 54901
Phone: 920-424-7885
Fax: 920-424-4404
Sarah.Adkins@wisconsin.gov



dnr.wi.gov





November 22, 2016

Winnebago County Board of Adjustment
Winnebago County Courthouse
415 Jackson Street
Oshkosh, WI 54901

Subject: Variance Request for Westin Land Holdings LLC (Wille Beamon's)

Dear Board Members:

This letter is to clarify my role regarding the shoreland zoning violations on the Westin Land Holdings LLC property.

My program reviews activities that are regulated under Wis. Stats. Chapter 30. Shoreland zoning is not under this statute, and the Department of Natural Resources (Department) delegates the implementation of shoreland zoning regulation to the local municipalities, which in this case is Winnebago County Zoning.

When I met with Ben Hamblin on site, I told him that any older pre-existing structures on the property that are regulated under Chapter 30 that never were permitted, would not require a Ch. 30 permit and/or removal until maintenance/reconstruction/etc were planned for that structure. The Department has jurisdiction over activities that take place below the Ordinary High Water Mark (OHWM), and County Zoning has jurisdiction on activities above the OHWM.

Therefore, my statements made onsite to Ben Hamblin would not apply to the structures within the shoreland zone, such as fences and light posts, since they are not structures regulated under Chapter 30. The structures I was referring to are the culverts that were installed below the OHWM on the navigable waterway on the property.

If you have any questions, or need further clarification, please call me at (920) 424-7885 or email sarah.adkins@wisconsin.gov.

Sincerely,

Sarah Adkins
Water Management Specialist

CC: Winnebago County Zoning
Dale Rezabek, WDNR

Bauer, Candace

From: Ben Hamblin <BHamblin@mcmgrp.com>
Sent: Wednesday, November 23, 2016 12:07 PM
To: Bauer, Candace
Subject: RE: phone conversation summaries - Dale Rezabek & Sarah Adkins

Oops. Insert the phrase "a hedgerow" after the word "with".
Good catch, Candace! Have a great weekend.

Sincerely,

Ben Hamblin, PE

Project Engineer
920-751-4200 (w)
920-810-2468 (c)
920-751-4284 (f)
bhamblin@mcmgrp.com



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920.751.4200 EXT 221 MCMGRP.COM



From: Bauer, Candace [mailto:CBauer@co.winnebago.wi.us]
Sent: Wednesday, November 23, 2016 12:04 PM
To: Ben Hamblin
Subject: RE: phone conversation summaries - Dale Rezabek & Sarah Adkins

Ben,

I think you're missing a key word in this statement:

- Dale believes that replacing fences with would improve the aesthetics of the structures, when viewing them from the navigable waterway.

Otherwise, thank you for your comments. I will make them available to the Board for consideration.

Respectfully,

Candace Bauer
Code Enforcement Officer
Winnebago County Zoning

Office: 920-232-3344

Email: cbauer@co.winnebago.wi.us

From: Ben Hamblin [<mailto:BHamblin@mcmgrp.com>]
Sent: Wednesday, November 23, 2016 11:58 AM
To: Bauer, Candace <CBauer@co.winnebago.wi.us>
Subject: phone conversation summaries - Dale Rezabek & Sarah Adkins

11/23/16

Candice,

The following letter summarizes my conversations with Sarah and Dale. I believe the letter accurately summarizes the conversations (I had Dale proofread his section before I sent this email to you). However, if you feel it is necessary, I encourage you to call them to verify the contents.

Please share this letter with the members of the Board of Adjustments, as it contains new information shared by Dale and Sarah that has significant bearing on this variance application. Should you have questions, do not hesitate to call or email. Thanks Candace!

Last week, I had conversations with both Dale Rezabek and Sarah Adkins from the Wisconsin D.N.R. This is in response to the Board of Adjustment's request for additional information, in order to clarify what appeared to be opposing viewpoints from two Wisconsin DNR employees. The purpose of these conversations was to gain additional understanding on their specific viewpoints regarding the structures within the 75' setback of the navigable stream at Willie Beamons. Both have their unique interests in protecting the navigable stream.

Sarah Adkins is the Water Management Specialist for Winnebago County. She has visited the site a few times to determine navigability limits of the stream, and is familiar with the structures in question. Sarah's focus is primarily on construction work in/near navigable waterways. According to Sarah, prior and current property owners should have obtained Chapter 30 permits for grading and installing the fences and light bases within a certain distance from the bank of the navigable waterway. However, Sarah believes that obtaining after-the-fact permits for the work completed is not necessary for the following reasons:

- The work completed (installing fences, light poles, grading/seeding, etc) is considered minor.
- The work was completed several years ago.
- The work completed does not have an adverse impact on the habitat or ecology of the navigable stream.

Dale Rezabek is the Water Regulations and Zoning Specialist for several counties in the State of Wisconsin. One of his responsibilities is to review county shoreland zoning variance requests, and provide an objective recommendation of the request. His recommendations are strictly based on DNR regulations (NR 115-Wisc. Administration Code, and Shoreland

related statutes). Dale believes that the structures that were installed between 2000 and 2010 do not meet the “three criteria” (unnecessary hardship, hardship due to unique property characteristics, no harm to public interest). However, he did offer his professional insight on the rationale behind his decision, and additional explanation of various topics regarding shoreland zoning regulations and their relevance to this situation:

- Shoreland zoning statutes control lot sizes, structure setbacks, vegetation, filling & grading, impervious surfaces, building heights, and nonconforming structures/uses for property within 75’ of navigable waterways.
- Shoreland regulations are necessary in order to:
 - preserve the aesthetics of the waterway.
 - Reduce pollution and sediment runoff that could enter the waterway.
 - Reduce peak flows that could enter the waterway and cause erosion.
 - Reduce the potential for obstructing the natural flow of floodwaters.
 - Preserve the habitat and ecology of the navigable stream.
- It is understood that there is no floodplain associated with this navigable stream. And, the stream has never flooded outside its banks because its flow is controlled by an upstream pond. Thus, it is likely that the fences and light poles should not hinder the normal flow of floodwaters.
- It is possible that the increased pollution draining into the navigable waterway due to the structures is minimal.
- It is possible that the increased peak flows caused by the impervious structures is minimal.
- Dale believes that replacing fences with would improve the aesthetics of the structures, when viewing them from the navigable waterway.
- Dale explained how shoreland zoning has evolved over several decades. Rules, setbacks, definitions and applications have varied widely. Regardless, Dale is forced to apply **today’s** shoreland zoning requirements to this specific situation. Dale is not allowed to apply the **prior** shoreland zoning regulations that were enforced when the structures were originally installed. Dale agreed that applying prior regulations would make more sense from a “grandfathering” standpoint. To provide one example, the definition of a “structure” was recently revised in Statute to be interpreted to include fences. It is possible when the softball diamond fences were installed, they were not regulated as a structure.
- Dale suggested that when the Town and County approved the conditional use permit in 2000, the proposed improvements to be constructed within the 75’ setback of the stream may not have been considered structures, and didn’t need to be permitted through shoreland zoning that was in place at that time. This could explain why no shoreland zoning permit associated with the 2000 condition use permit exists.
- According to Dale, current shoreland zoning regulations state if a structure was installed without a permit, and it has been in place for 10 years or longer, the county is not allowed to take enforcement action. This has significant bearing in this situation, as it would apply to several of the structures including those structures associated with the south softball diamond, which were installed in 2005.

Should you have questions, do not hesitate to call. Thanks!

Sincerely,

Ben Hamblin, PE

Project Engineer
920-751-4200 (w)
920-810-2468 (c)
920-751-4284 (f)
bhamblin@mcmgrp.com



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Bauer, Candace

From: Bauer, Candace
Sent: Thursday, November 17, 2016 3:34 PM
To: 'Ben Hamblin'
Subject: RE: Willie Beamons original conditional use permit

Ben,

Thank you for the email. I will add it to the file and have available for the Board on December 1st.

Respectfully,

Candace Bauer
Code Enforcement Officer
Winnebago County Zoning

Office: 920-232-3344
Email: cbauer@co.winnebago.wi.us

From: Ben Hamblin [<mailto:BHamblin@mcmgrp.com>]
Sent: Thursday, November 17, 2016 11:00 AM
To: Bauer, Candace <CBauer@co.winnebago.wi.us>
Subject: Willie Beamons original conditional use permit

Candace,

Thanks for your time last night. Below is an abbreviated list of events that have transpired since last night, and of requested information:

- Attached is the original conditional use permit from 2000, for a lighted 9 hole golf course. Please share with the board of adjustments and plan commission members.
- Please email me a copy of the DNR's opinion regarding the shoreland zoning.
- I am currently in conversation with Sarah and Dale from the DNR. I plan on meeting them onsite to discuss their opinion on the shoreland zoning/chapter 30 permit requirements, and the basis for their decisions.
- I am also in conversation with Mr. Kiesow, and the manager of the softball program at Willie Beamons. I also plan to meet with both of them onsite to discuss Mr. Kiesow's concerns regarding noise.

Should you have any questions, or have additional information to share, do not hesitate to call or email. Thanks!

Sincerely,

Ben Hamblin, PE

Project Engineer
920-751-4200 (w)
920-810-2468 (c)
920-751-4284 (f)
bhamblin@mcmgrp.com

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Zoning Department
P.O. Box 2908
Oshkosh, WI 54903-2908

Check or Money Order payable to: Winnebago County
Oshkosh (920) 238-4844
Fox Cities (920) 727-2880

FEE: \$250.00
Receipt #: 300206

APPLICATION FOR
CONDITIONAL USE PERMIT

APPLICATION # 01-21-027

(Please print or type. Please use black ink for duplicating purposes.)

A. PROPERTY OWNER:

A-1 NAME RICHARD M. MROTEK D/O/A ON THE TEE LLC
Mailing Address 2590 COUNTY HWY II
NEENAH WI 54956
Phone 920-720-8623 Signature [Signature]
Date 7/14/00

I HEREBY APPOINT THE FOLLOWING AS MY AGENT FOR PURPOSES OF THIS APPLICATION:

A-2 APPLICANT (NAME) N/A
Mailing Address _____
Phone _____ Signature _____
Date _____

B. PROPERTY INFORMATION:

B-1 Tax Key/Parcel #: 006-0370-006-0370-06, 006-0370-07
B-2 Lot _____ Block _____ Subdivision _____
Section SE 13 Town 20 North Range 16 East
Town of CLAYTON Acres _____
B-3 Location (of property) 2590 COUNTY HWY II NEENAH WI
B-4 Zoning (Existing) P-1 Zoning (Proposed): P-1
B-5 Shoreland Floodplain _____ (if so, elevation: _____)
Wetlands M-3 Overlay _____ Airport _____ SWDD _____
B-6 Use (Existing): GOLF RANGE + RESTAURANT, BAR
Use (Proposed): GOLF COURSE (9 HOLE), RESTAURANT + BAR
B-7 SEWER: Existing Required _____ Municipal _____ Private System: _____
B-8 Surrounding Zoning: North/West: M-1; South: A-2; East: A-2/M-1

(See Reverse Side)

Applicant must fill out the shaded questions ONLY.

D-1 Section 17.14(4)(b)(1) (Zoning Ordinance)

D-2 Ordinance Provision (s): CU required for a golf course in a P-1 District.

D-3 Conditional Use Request:

9 Hole EXECUTIVE GOLF COURSE

D-4 Describe the proposed use:

Would like to convert the current golf course into a 9 hole Executive Golf Course which would be lighted in the evenings. See attached for further information

D-5 Describe how the proposed use will not have adverse effects on surrounding property:

Surrounding property is vacant land on two sides, and warehousing on west

D-6 Explanation: ATRCU for a 9 hole golf course in a P-1 District.

Richard M. Mrotek
D/b/a On The Tee, LLC
2590 County Highway II
Neenah, WI 54956
920-720-8623

July 17, 2000

Application for Conditional Use Permit:

Additional Information:

Currently, On The Tee, LLC is a golf range, restaurant and bar. The golf range has 6 heated stalls for colder weather usage in addition to numerous outdoor stations. The restaurant and bar currently employ two persons in addition to myself and my wife. We are open six to seven days a week from 10:00 a.m. to 10:00 p.m.

We are applying for a conditional use permit to construct a 9 hole par 3 executive golf course which would be lighted at night for evening play. We believe this course would fulfill a void in this area. Currently, there are several private 18 hole golf courses and one private 9 hole course. Although there are a number of public 18 hole courses, none of them are only 9 holes and none of them are lighted at night. In addition, this style of course allows players to strengthen their short game, namely chipping and putting.

Our employee count would increase during the summer months to add at least six part-time associates to help with the additional hours we would be open, the anticipated increase in food and beverage demands and maintenance of the course on a day to day basis. Additional full time employees would be added if year round demand would require it.

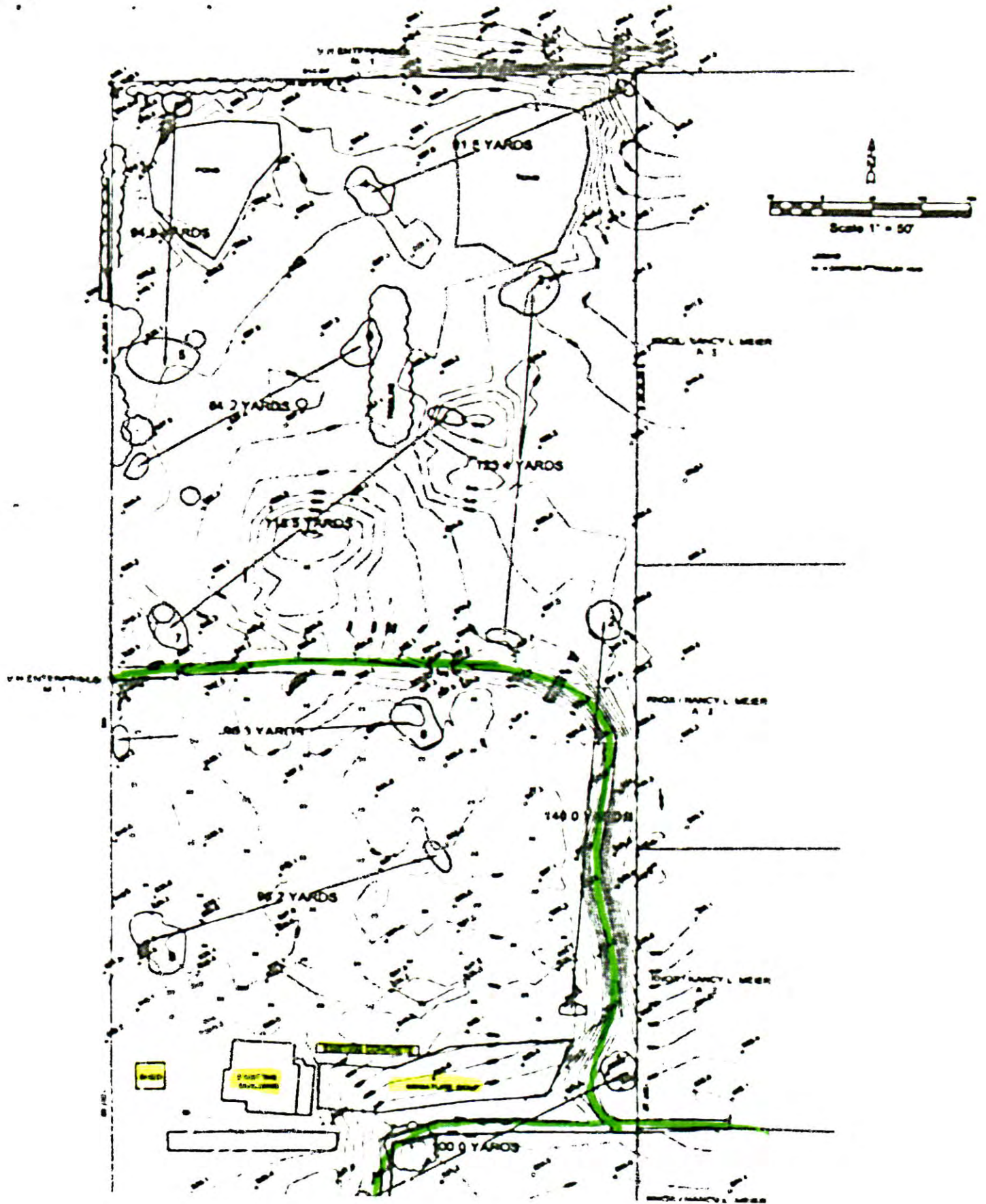
We would open the course in the spring as weather permitted, and hours of operation are anticipated to be from 6:00 a.m. to 10:00 p.m. with the last tee time being accepted at 10:00 p.m. We anticipate being open seven days a week from April 15 through October 15 during this peak season.

We do not anticipate additional landscaping other than what is indicated on the site plan at this time.

Duration of the permit: _____

Grading plan will be conducted upon approval of permit by Duvel Engineering

Application date: 2000



Bauer, Candace

From: Bauer, Candace
Sent: Thursday, November 17, 2016 3:38 PM
To: 'Duane Fox'; bhamblin@mcmgrp.com; Dan VandenHeuvel; Ben Haupt
Subject: RE: Westin Land Holdings

Thank you, Duane. I will add this information to the file for reference.

Respectfully,

Candace Bauer
Code Enforcement Officer
Winnebago County Zoning

Office: 920-232-3344
Email: cbauer@co.winnebago.wi.us

-----Original Message-----

From: Duane Fox [mailto:foxdua@wsinc.com]
Sent: Thursday, November 17, 2016 1:32 PM
To: bhamblin@mcmgrp.com; Bauer, Candace <CBauer@co.winnebago.wi.us>; Dan VandenHeuvel <VANDAN@wsinc.com>; Ben Haupt <hauben@wsinc.com>
Subject: Westin Land Holdings

Ben:

For the record, the two storage trailers buried in fill by the Willie Beamon's crew are wholly on the VH Enterprises parcel.

I have a few reference monuments placed on the common side lot line that I could locate, if need be.

If the trailers were excavated and removed, it would greatly facilitate future maintenance of the storm water detention basin.

Thanks for any encouragement you may be able to offer the grounds crew.

Duane Lee Fox
Engineering
WSI
Celebrating 50 Years of Reliability (1966-2016)
920.830.5209 Office 920.740.9332 Mobile
wsinc.com









Bauer, Candace

From: Bauer, Candace
Sent: Thursday, November 17, 2016 3:38 PM
To: 'Duane Fox'; bhamblin@mcmgrp.com
Cc: Dan VandenHeuvel; Scott Halvorson; rharris@harrisinc.net
Subject: RE: Westin Land Holdings

Thank you, Duane. I will add this information to the file for reference.

Respectfully,

Candace Bauer
Code Enforcement Officer
Winnebago County Zoning

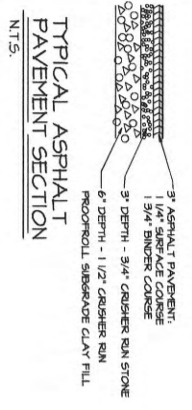
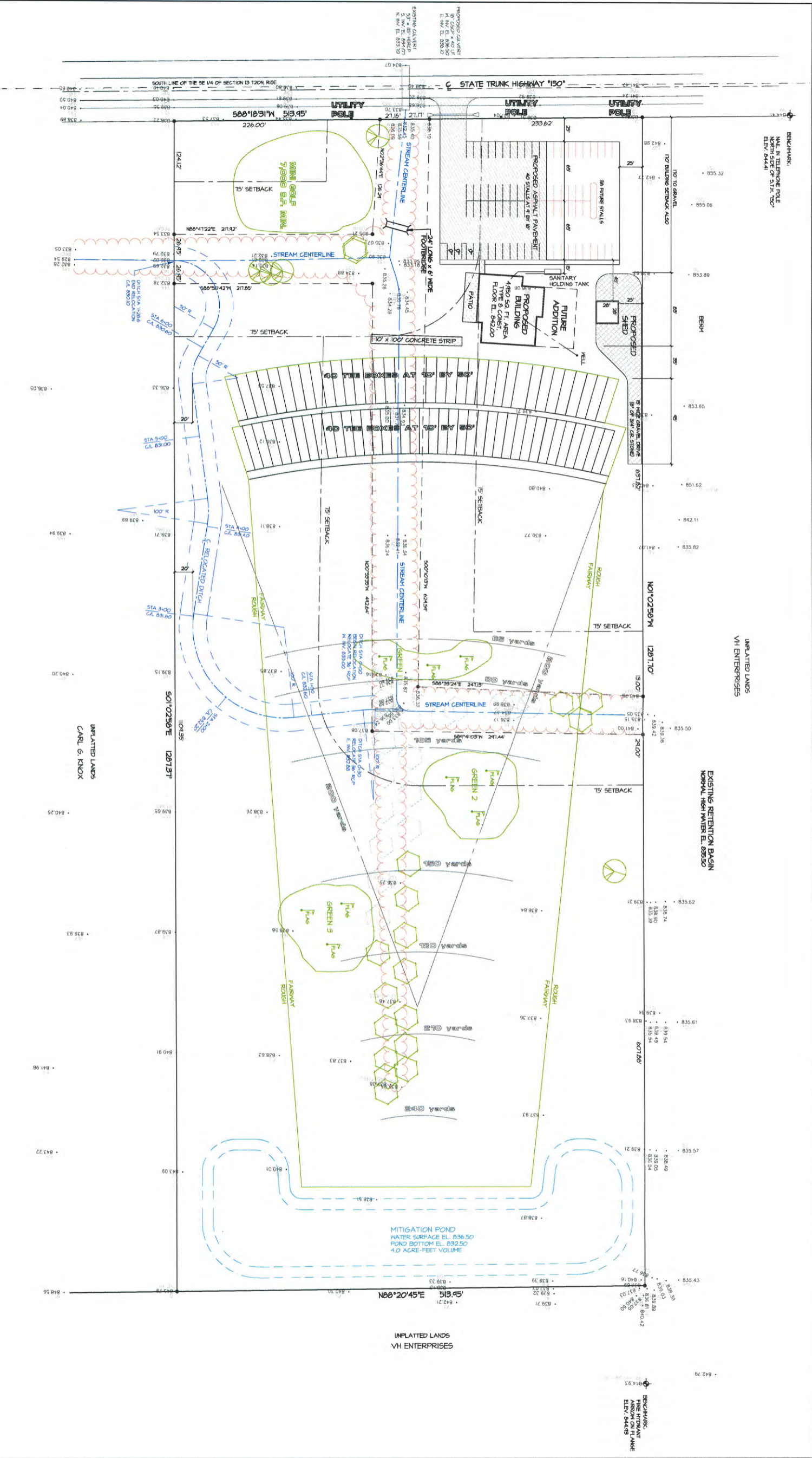
Office: 920-232-3344
Email: cbauer@co.winnebago.wi.us

From: Duane Fox [mailto:foxdua@wsinc.com]
Sent: Thursday, November 17, 2016 1:21 PM
To: Bauer, Candace <CBauer@co.winnebago.wi.us>; bhamblin@mcmgrp.com
Cc: Dan VandenHeuvel <VANDAN@wsinc.com>; Scott Halvorson <halsco@wsinc.com>; rharris@harrisinc.net
Subject: Westin Land Holdings

Candace/Ben:

Attached is the 1995 site plan that Scott Lemire dba The Swing Shop used for the original permitting. I did revise some of the lines cosmetically, adding some color, to make it more legible. I do not believe that we (Harris & Associates, Inc.) were involved in the 1990-ish conversion from driving range. But if you want to pursue that, you could contact Rob Harris.

Duane Lee Fox
Engineering
WSI
Celebrating 50 Years of Reliability (1966-2016)
920.830.5209 Office 920.740.9332 Mobile
wsinc.com



SITE PLAN
SCALE: 1" = 50'

- LEGEND**
- 1" LIGHT POLE
 - 3"6" REBAR POLE
 - 1/2" EXISTING WWT ELEVATION
 - EXISTING CENTER
 - PROPOSED FINISH GRADE
 - INTERPROPOSED WATER MAIN
 - WATER VALVE
 - MANHOLE
 - STORM SEWER
 - CATCH BASIN
 - TELEPHONE/RECREATION LINE
 - INTERPROPOSED NATURAL GAS LINE
 - INTERPROPOSED ELECTRIC
 - POWER & LIGHT POLE
 - 8" HIGH CHAIN LINK FENCE
- LIMITS OF PROPOSED CONCRETE PAVEMENT
 - LIMITS OF EXISTING BITUMINOUS PAVEMENT
 - LIMITS OF PROPOSED BITUMINOUS PAVEMENT
 - LIMITS OF PROPOSED GRAVEL PAVEMENT

PROPOSED BUILDING FOR:
THE SWING SHOP
TOWN OF CLAYTON, WISCONSIN



DESIGN / BUILD CONTRACTORS
GENERAL CONTRACTORS
414-766-9700 FAX: 414-766-2924
209 SOUTH STATE STREET
KAUKAUNA, WISCONSIN 54901-0620

DRAWN BY	HEITENRACH
APPROVED BY	DLF
REVISIONS	
BY	DATE
04	6-23-09

State of Wisconsin
 DEPARTMENT OF NATURAL RESOURCES
 625 E. County Road Y, Suite 700
 Oshkosh WI 54901-9731

Scott Walker, Governor
Cathy Stepp, Secretary
 Telephone 608-266-2621
 Toll Free 1-888-936-7463
 TTY Access via relay - 711



November 16, 2016

Winnebago County Board of Adjustment
 Winnebago County Courthouse
 Lounge Room (Rm 60)
 415 Jackson Street
 Oshkosh, WI

Subject: Variance Requests for the Juedes Trust Property and Westin Land Holdings LLC Property, Winnebago County

Dear Board Members,

I am writing to you to provide Wisconsin Department of Natural Resources (department) comments regarding the Juedes Trust property and the Westin Land Holdings LLC property variance requests that are to be heard before the Winnebago County Board of Adjustment (BOA) on November 16, 2016. I appreciate that you provided me with the variance request application materials for these requests. I am providing these comments to you in place of making an appearance at the public hearing in person. Please have these comments delivered to the BOA and made part of the official recording of the hearing, including how the BOA has taken them into their consideration. The department has no specific comments regarding the variance requests for the Lerch property, the Doehling property, the Mayer property, or the Kish property.

Juedes Trust property

Comments: The applicant must convincingly demonstrate that they are meeting all three required variance criteria for unnecessary hardship (area or use), hardship due to unique property limitations, and no harm to public interests. The department notes that the combining of two 50 foot wide lots into one 100 foot wide lot contributes favorably to reduce the density of the shoreland zone. The location of ordinary high water mark for a lake and a stream on two sides of a property does constitute a unique property limitation for a reasonable buildable area, so some minimal relief may be warranted. The water quality of streams and lakes are important to protect, and that protection is in the form of shoreland ordinance limitations including structure setbacks (75 feet setback) and vegetative buffer zones (minimum of 35 feet) from the ordinary high water mark of navigable waterways.

There was a previous variance for one of the lots for a setback of 15 feet from the stream OHWM. The department reminds the BOA that since a variance was granted previously for a lot, per Anderson, Robert M. *American Law of Zoning* 3d, (1986) Vol. 3, s. 20.86, pp. 624-5, a sequential/additional variance at this time should likely not be granted. Page 100 of the Zoning Board Handbook for Wisconsin Zoning Boards of Adjustment and Appeal (2nd Edition, 2006, L. Markham and R. Roberts) explains the reasoning for this. Additional variances granted for a property may be providing more than just minimal relief.

Structures allowed to be located within the 35 foot vegetative buffer zone would be contrary to the purposes of shoreland zoning. The department would not be opposed to variance decisions for modified plans for a property which would benefit public interests, improve water quality by preventing and controlling water pollution, protect near-shore fish and wildlife habitat, and increase natural scenic beauty. The department also notes that there may be floodplain zoning considerations for this property and those issues should be discussed with the zoning staff for any other ordinance limitations.

Westin Land Holdings LLC property

Comments: The applicant must convincingly demonstrate that they are meeting all three required variance criteria for unnecessary hardship, hardship due to unique property limitations, and no harm to public interests. The variances for this case are for several unpermitted structures (fences, recreation/dining/parking areas, stadium lighting) that are located with the 75 foot shoreland setback and may also be within the 35 foot vegetative buffer zone area for navigable waterways. These structures are not related to waterway activities, and granting variances for these structures would undermine the intent of the shoreland zoning ordinance, which serves the important purposes of protecting fish and wildlife habitat, water quality, and natural scenic beauty in and around navigable bodies of water.

The shoreland setback serves an extremely important function of buffering navigable waterways from polluted runoff and a buffer is typically the most productive in terms of fish and wildlife habitat. While the County's Ordinance does allow some structures to be within the 75 foot setback, those structures are limited to primarily those structures necessary to access the water for navigation and recreational enjoyment. The department recommends these variances should be denied since the three criteria do not appear to be met. There are no unique property limitations that would prevent them from complying with the County's Ordinance provisions. Finally, the variance would be contrary to the public interest in protecting navigable waters. While this request may by itself seem insignificant, cumulative impacts must be taken into consideration when the public interest test is used.

Please note that these comments are in regard to shoreland zoning only, and do not reflect applicable erosion control, waterway permitting, or other department regulations. Please contact me if you have any question regarding these recommendations at 920-303-5440.

Sincerely,



Dale Rezabek
Regional Shoreland Specialist

cc: File