



# DANE COUNTY PLANNING & DEVELOPMENT

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**TO:** Christiana Town Board Members, Supervisor Robert Salov  
**FROM:** Roger Lane, Dane County Zoning Administrator  
**CC:** Supervisor Robert Salov, Jeff Levake, Christiana Town Clerk  
**SUBJECT:** JCL Rentals (Jeff Levake) request to amend deed restrictions, Petition 10775  
**DATE:** December 12, 2014

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I have been asked to provide a summary report of the zoning on the property located at 297 Rodney Road in the Town of Christiana. This report includes the pending violations and possible solutions.

## **History:**

In 1979, the Town of Christiana began participating in the State Farmland Preservation program. At the time, the original Johnson property consisted of 240 acres. The entire farm was rezoned to the A-1 Exclusive Agriculture Zoning District and subject to the density policies found in the Town Comprehensive Plan.

In 1995, 14.5 acres of the Johnson farm (east of Rodney Road) was rezoned from A-1 Exclusive zoning to C-1 Commercial zoning. The purpose was to construct a bed and breakfast establishment with surrounding business amenities. The zoning was approved but the land use was limited to banks, offices, rental businesses, sales of lawn and garden equipment, and bed and breakfast establishments. The bed and breakfast establishment never transpired and the land was left vacant.

In 2003, the Town amended the Town Comprehensive plan to count commercial development has a development right (split) under the density policies. Any commercial lot created through a certified survey map (CSM) after January 14, 2003 would count as non-farm development.

In 2004, 2 acres of the 14.5-acre C-1 property was rezoned to C-2 and sold to Jeff Levake. The purpose was to construct a building for a soil testing and excavation business. The zoning was approved with the land use limited to a soil testing/excavation business. The Town Action Report also stated that no further "splits" (divisions) were allowed on the property. The first building was constructed on the property.

In 2005, an additional 2.4 acres was requested to be added to the Levake property. The letter of intent stated the expansion was for the future use by the soil testing company. The zoning was approved with the land uses limited to the storage of contractor's machinery and equipment, sale and storage of building materials, and parking and storage of motor vehicles to this newly created 4.4 lot. The approval also prohibited outside storage of materials and any division of the property.

In 2008, a second building was constructed on the property for contractor storage facility. At the same time, Mr. Levake recorded a condominium plat on this particular building. Please note that the recording of a condominium document is not reviewed by the Town or County. The condo plat allowed Mr. Levake to sell individual portions of this building to other people. Although the owners would be part of one entity (condominium association), the spaces would be owned and operated as separate businesses. The condominium plat consisted of four individual ownership spaces (Units 1 through 4).

In 2010, Mr. Levake recorded an addendum to the condominium plat to add a third building on the property. The building housed an additional four individual ownership spaces. Also included as part of the condominium plat were the existing soil testing business building (first building) and another accessory building (existing farm building). The Condominium Plat now contained 9 defined ownership spaces.

In 2011, Mr. Levake recorded another addendum to the condominium plat to reconfigure the ownership areas of the condominium plat. The third building was reduced into two ownership units and the soil testing building and accessory building were consolidated into one ownership unit. The revised condominium plat now contained 7 ownership spaces.

In 2013, Mr. Levake recorded another addendum to the condominium plat added a fourth building on the property. The fourth building contained an additional 7 ownership spaces. This would bring the total ownership spaces to 14. With this current configuration, up to 14 separate owners could potentially be able to own a portion of buildings and operate a separate business from the property.

### **Current Deed Restrictions**

Various deed restrictions were recorded on the property since 1995. Each recorded deed restriction had a specific boundary description assigned to it and specified the business operation allowed on the property. Given that the most current deed restriction identifies the current legal description, Lot 4 of CSM 11614, Dane County Zoning feels that this current deed restriction is the only one that applies to the property. The previously recorded deed restriction notes different legal descriptions that are now obsolete due to the subsequent recording of new certified survey maps.

The current deed restriction on the property at 297 Rodney Road lists the following:

- Limit uses exclusively to repairs, storage and service of contractor's machinery and equipment; bulk fuel storage, sales and storage of lumber and building material; and parking or storing of motor vehicles.
- Prohibit outside storage
- Prohibit further division of the property

### **Permitted Land Uses**

When the approval was granted under petition #9346 in 2005, the deed restriction was drafted using the land use labels as found under the C-2 Commercial Zoning District. Minutes of the approval notes the listed uses found under 10.14(f)(h)and(q). These referenced land uses were used to describe the operations of the soil testing/excavating business.

However, if one reads the deed restriction with plain meaning, one could assume that variously different uses could occur. As an example, the deed restriction lists the sales and storage of building materials. One would assume that a big box retail hardware store could be allowed on the property. This was clearly not the intent of the approval. Dane County Zoning believes that the deed restriction intended to allow a single use, being a soil testing/excavating business to occur on the property.

Given that the deed restriction has some ambiguity, Dane County Zoning would interpret the deed restriction to mean that the property is to be used exclusively for a construction contractor office. This is based on information found under Zoning Petition #9346. The contractor business would be allowed to store building materials associated with the business along with associated vehicles and equipment. All operations, included storage, servicing of equipment, and parking would need to be conducted inside a building. The any division of the parcel is prohibited.

## **Zoning Permits**

Various zoning permits have been issued over the years. The first permit was issued in 2004 for the construction of the soil testing business.

A permit for the second building was issued in 2008. The permit states that building was to be used for contractors' storage building. The deed restrictions on the property allows for the storage of contractor's equipment.

A permit was issued in 2011 for the third building. The zoning permit states that the building is a mini-warehouse with 4-units. In speaking with Dane County Zoning Inspector Schroeckenthaler, he stated that it was understood that the spaces were to be used for the storage of contractor's equipment and materials as noted in the deed restrictions.

A permit was issued in 2013 for the fourth building. The zoning permit states that the building is a mini-warehouse with 6-units. In speaking with Dane County Zoning Inspector Sauer, she stated that it was understood that the spaces were to be used for the storage of contractor's equipment and materials as noted in the deed restrictions.

In reviewing the layout of the most recently constructed building, it appears that the building can be used as an actual mini-warehouse for the storage of personal belongings. If used in this manner, this would be in violation of the deed restrictions and county ordinances.

The site has a potential of having a fifth building on the property. The only restriction would be that the development would need to meet the maximum building coverage of 60%.

## **Pending Violation**

Dane County Zoning Division conducted a site inspection on the property due to a complaint lodged by the Town. The inspection revealed that the property was being used for other purposes than what was listed in the deed restrictions. Land uses observed were as follows: soil testing business, coffee bean warehousing, trucking company, concrete contractor, electrical contractor, and personal storage of recreational equipment. Outside storage of materials was also observed. There were also two semi-trailers parked on site.

Dane County Zoning Division has determined the activities listed below are violating the deed restrictions:

1. The outside storage of various materials.
2. The warehousing of coffee beans. This business would not be considered under storage of contractor's equipment/ bulk fuel storage/building materials.
3. The operation of a trucking company. Dane County would define this activity as a truck terminal and is not listed under the acceptable land uses.
4. The personal storage of recreational equipment. Although the deed restriction lists parking and storing of motor vehicles, the zoning ordinance specifically defines recreational equipment as boats, snowmobiles, motor driven campers and motor homes.
5. The fourth building has been compartmentalized into small spaces with a single access via an overhead door. The current design meets the definition of a mini-warehouse and would be considered a violation of the deed restrictions.

The specific language of the deed restriction notes, "Prohibit further division of the parcel". Although not addressed in the Notice of Violation, county staff is concerned that the recorded condominium document may violate the deed restriction. It appears by the creation of units, together with its undivided interest in a common element (land), for all purposes create the division of real property (Wisc. Stats. 703.04) . If

the Town considers this matter of issue, the County will pursue enforcement of this aspect of the deed restriction.

**Corrective Action**

In order to correct the pending violations, Dane County Zoning Division had suggested that the landowner submit a zoning petition to see if the Town would be willing to amend the deed restrictions to identify the land uses presently on the property. Zoning Petition # 10755 is currently under review by the Town and the County. However, the application does not list the desired land uses. It only states that the applicant would like to amend or eliminate the deed restrictions to allow permitted uses in the C-2 Commercial Zoning District.

**OPTION 1**

The request greatly expands the land uses for the property. There are some land uses listed in the C-2 Commercial Zoning District that may be incompatible with the other surrounding land uses. Given that a condominium plat has been recorded on the property, there is a potential to have up to 26 individual businesses in this location. If the request is not revised, County Staff would suggest denial of the petition based on the overall land uses listed in the C-2 Commercial District not being compatible with surrounding land uses and the potential amount of development having a negative effect on roadways.

**OPTION 2**

Another option is to approve the petition with amendments. The amendment would list specific desired uses and control the amount of development to an acceptable level. The two primary concerns with this parcel is the types of land uses and amount of potential individual businesses. If this option is favorable to the Town Board, County Staff suggest the following amendments:

**1. AMEND DEED RESTRICTION**

Change the deed restriction to allow the following uses: Contractor's offices and indoor storage of contractor's equipment and vehicles; indoor warehousing of business stock (personal belongings prohibited); trucking business limited to a maximum of one tractor and two trailers to be stored on the property (site plan needed to identify area); and outside storage of materials (site plan to identify area). This amendment would allow the current businesses to operate on the property. The personal storage of recreational vehicles is not recommended to be included due to its close association to mini-warehouses.

To limit development potential, the deed restriction identify maximum number of business and the amount of buildings on the property. Currently, there are five businesses operating on the property contained within two of the four buildings on the property.

**2. BUILDING ALTERATION**

It appears that the intent of the fourth building was to create spaces for the personal storage of items. It has been suggested that the building be removed or the exterior revised to allow multiple entrances to the warehouse spaces. Note: A mini-warehouse building is defined as a storage building comprised of separate compartments each of which is intended for separate rental and each has its own entrance.

**3. CONDO DOCUMENT REVISION**

The condominium document should be revised to reflect the number of business spaces allowed and should be revised to list the allowed land uses of the property.

Should the Town find Option 2 acceptable, the applicant of Zoning Petition # 10755 should make a formal request to revise the pending petition in order for the Town and County to review the revised proposal.

Petition 10755  
JCL Rentals LLC  
297 Rodney Road  
Section 2  
Town of Christiana

**Motion** by \_\_\_\_\_, seconded by \_\_\_\_\_ to amend the zoning district classification for Lot 4, CSM 11614, Section 2, Town of Christiana, to C-2 Commercial Zoning District contingent upon the following conditions being met within 90 days of adoption:

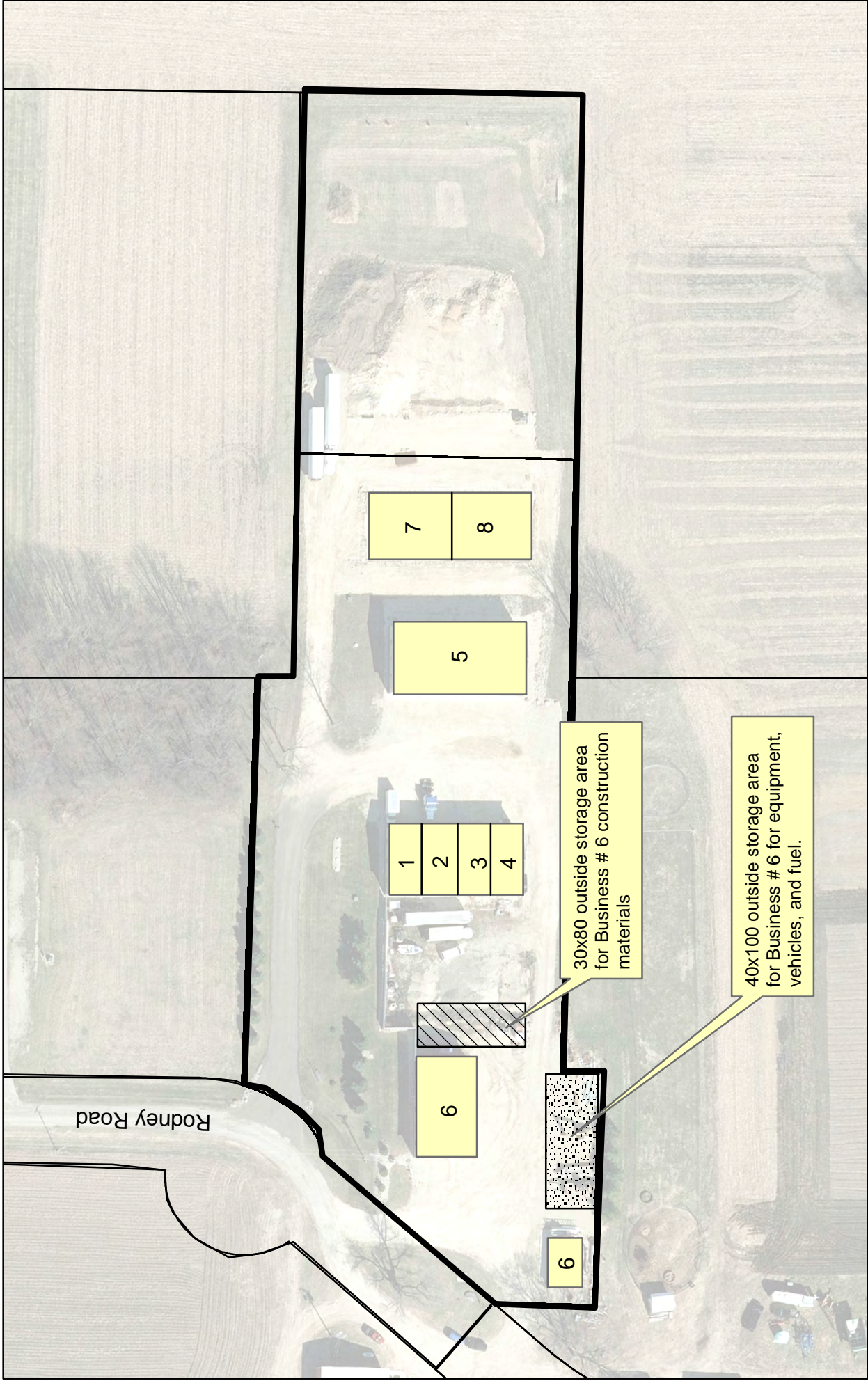
1. The deed restriction found under Dane County Register of Deeds document #4138178 shall be amended to the following restrictions:
  - a. The property shall be limited exclusively to the following land uses: Contractor's offices and indoor storage of contractor's equipment, vehicles, and construction materials. Building space #5 is permitted to be used for the indoor storage of recreational vehicles. Storage of personal belongings in all other units is prohibited. Unit spaces shall not be used for living quarters or act as residences.
  - b. Outside storage of materials, equipment, or vehicles is prohibited except for the specified areas as shown on the attached Site Development Plan.
  - c. The building layout shall comply with the attached Site Development Plan. Construction of additional buildings or expansion of buildings is prohibited.
  - d. There shall be a maximum of 8 condominium units located on the property. The ownership units shall comply with boundary spaces as designated on the attached Site Development Plan. Unit spaces shall not be further divided or partitioned off to create separate ownership/rental spaces.
  - e. Units 7 & 8 shall have a maximum of 3 overhead doors located on the east side of the building (per unit). The west side of the building shall have a maximum of one overhead door and one service door (per unit).
2. The Board of Directors or "Manager" of the JCL Condominium Association shall enter into an agreement with the Town of Christiana and Dane County acknowledging that occupants of Unit #1 and Unit #2 are in violation of the recorded deed restrictions for the property. The Condominium Association shall agree that the coffee warehousing business found within Unit #1 and the trucking company found within Unit #2 are violating the recorded deed restrictions and further agree that the specified land uses shall be removed from the premise or cease no later than January 1, 2018. JCL Condominium Association shall further agree that any future violations of the deed restrictions will be cause for immediate penalties for violations of the Dane County Code of Ordinances as found under Dane County Code of Ordinances section 10.25(5).
3. The declaration of condominium of JCL Condominium which was recorded on August 28, 2008 as Document No. 4463293 in the Dane County Register of Deeds office shall be amended in the following fashion:
  - a. The JCL Condominium Plat shall be amended to designate a maximum of eight (8) condominium units as shown on the attached Site Development Plan.
  - b. The Area Reserved for future expansion shall be removed from the Declaration of Condominium.

- c. The language as found under Section 7 of the Declaration shall be amended to the following:

Use of Property:

~~All property designated for commercial and business use consistent with the Dane County Ordinances and Town of Christiana Ordinances and shall be used and devoted exclusively to commercial and business uses.~~ The property shall be limited exclusively to the following land uses: Contractor's offices and indoor storage of contractor's equipment, vehicles, and construction materials. Building Unit #5 is permitted to be used for the indoor storage of recreational vehicles. Storage of personal belongings in all other units is prohibited. Outside storage of materials is prohibited except for designated areas as shown on the Site Development Plan. Unit spaces shall not be used for living quarters or act as residences. Refer to deed restrictions for Lot 1 of Certified Survey Map 11614 for additional information. No such use may unreasonably interfere with the use and enjoyment of the Common Elements and their Units by other Unit Owner. There may be no storage or activity which increases the insurance rates of the Condominium.

4. The exterior of the most easterly building (Units 7 & 8) shall be reconstructed in the following manner: The number overhead doors located on west side of the building shall be reduced to a maximum of one overhead door and one service door per unit.



# Site Development Plan 297 Rodney Road Town of Christiana

1. Outside storage is prohibited other than specified areas.
2. Construction of additional buildings is prohibited.
3. There shall be a maximum of 8 businesses or ownership spaces on the property as designated. Spaces shall not be divided or partitioned off to create separate units.
4. Units shall not be used as living quarters or residences.

