



AXLEY BRYNELSON, LLP

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March 20, 2014

VIA HAND DELIVERY AND EMAIL

Mr. Roger Lane
Dane County Zoning Administrator
Room 116, City-County Building
210 MLK, Jr. Blvd.
Madison, WI 53703-3342

Re: **APPEAL OF THE GRANT OF CONDITIONAL USE PERMIT #2258**
Applicant: Waubesa Beach Club LLC
Appellant: Mr. Bruce Lindsay, 2946 Waubesa Avenue, Town of Dunn
Our File: 19197.71702

Dear Mr. Lane:

We represent Mr. Bruce Lindsay of 2946 Waubesa Avenue, Town of Dunn, and are filing this appeal of the Dane County Zoning & Land Regulation Committee's ("ZLR") and the Town of Dunn's (the "Town") decision to grant Waubesa Beach Club, LLC (the "Applicant") a Conditional Use Permit as provided for under Section 10.255 (2)(J) of the Dane County Ordinances.

The Applicant operates the tavern known as Christy's Landing at 2952 Waubesa Avenue, Town of Dunn. Mr. Lindsay's home is within approximately 64 feet of the proposed expanded use of Christy's Landing outdoor volleyball / beer garden. Mr. Lindsay is aggrieved by the Town's and ZLR's approval of the Conditional Use Permit because the Town's and ZLR's factual findings supporting their decision to grant the conditional use were clearly erroneous. The expansion of Christy's Landing to allow for an additional volleyball court / beer garden area within 64 feet of Mr. Lindsay's home adversely and significantly affects the use, value, and enjoyment of Mr. Lindsay's home.

Background Facts

The Applicant currently operates Christy's Landing as a nonconforming use. In 1950, the property was zoned B-1 Business Zoning District to identify the existing tavern land use. In 1987, a conditional use permit was obtained for an illuminated outdoor volleyball court as part of a tavern expansion. In 1992, Dane County changed the land uses listed under B-1 Business

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Zoning District which deleted taverns and lighted outdoor activities within the district. This recent revision establishes a clear intent to limit uses in these districts.

In August 2013, Dane County found out that the Applicant was expanding the existing non-conforming use of an illuminated outdoor volleyball court. Dane County issued a stop work order, and only thereafter did the Applicant come forward with its conditional use application.

The significance of the Applicant's request cannot be understated. The Applicant desires to expand a non-conforming use in the middle of a residential area on Lake Waubesa. To do so, the Applicant must:

- rezone its property from a B-1 Business Zoning District to C-1 Commercial
- obtain a Conditional Use Permit
- obtain a certified survey map to reconfigure its current lots
- obtain two variances from the Dane County's Land Division and Subdivision Regulations
- obtain two variances from Dane County's Shoreland Zoning Ordinance

Moreover, there are no facts that appear to support the hardships necessary to grant the variances. Christy's Landing already operates as a non-conforming lot. How can expanding a tavern to allow for an additional volleyball / beer garden area ever support the finding of a hardship?

Conditional Use Standards

Specifically, Dane County Ordinance § 10.255(2)(h) sets forth six conditions that all must be met before a conditional use may be granted. Section 10.255(2)(h)2, provides:

That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by establishment, maintenance or operation of the conditional use.

In making their decisions, the Town and the ZLR both ignored facts that established that the Applicant did not meet the above condition necessary for granting a conditional use permit.

The Value of Mr. Lindsay's Property Has Been Diminished

Mr. Lindsay provided both the Town and ZLR with evidence that the expansion reduces the assessed value of his property. Shortly after the second volleyball court was constructed, the

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Town of Dunn sent its assessor to inspect my property. You have a copy of the amended assessment report. The Town's assessor reduced the assessed value from \$357,700 to \$274,000. The Town's assessor verbally told Mr. Lindsay that this was due solely to the proximity to Christy's Landing.

Thereafter, the Town asked its assessor to clarify the reduction. The Town's assessor responded by email that in his "estimation, approximately \$25,000 of the reduced assessment could be attributed to the activities at Christie's [sic] Landing." While there may be a dispute as to the amount of the decrease that is attributable to Christy's Landing, the assessor makes clear that he attributed a significant portion of the decrease in value to Christy's Landing expansion. Moreover, the expansion will likely only further decrease the value of Mr. Lindsay's home.

The Use and Enjoyment of Mr. Lindsay's Property Has Been Impaired

The volleyball court / beer garden will be approximately 64 feet from Mr. Lindsay's bedroom windows. This will bring volleyball players and the tavern's patrons closer to Mr. Lindsay's yard and home. Additional volleyball players and patrons closer to Mr. Lindsay's home will cause more noise and more disruption. It is not a question of "if" but a question of "how much." Mr. Lindsay has provided testimony that patrons of Christy's Landing have urinated in his yard, the lights shine in his bedroom windows and the noise keeps him up at night. Of particular annoyance are the referee whistles blowing until 10:00 pm. The expansion of the complex closer to his house will clearly impact his enjoyment of his home.

Moreover, the Town and ZLR have approved 25 amplified, live music events per year. Mr. Lindsay submitted a Sheriff's Report of a noise complaint from last year where the deputy observed noise level readings of 90 decibels on Mr. Lindsay's property. Mr. Lindsay also documented 15 noise complaints violating the 10:00 PM quiet zone.

To address noise, the Town and ZLR have set a condition limiting the noise levels from the 25 live music events to 85 decibels. 85 decibels is the limit at which National Institute for Occupational Safety and Health recommends hearing protection.

As a comparison to local municipalities, the City of Madison, (Chapter 24) ranges from 65-75 decibels depending on the receiving zone classification and the source level zoning. The City of Middleton (Chapter 16) permits outdoor amplified sound at a maximum of 55-65 decibels, depending on time, and a maximum of 65 decibels at the property line. The City of Monona provides a maximum range of 55-65 decibels, depending on time.

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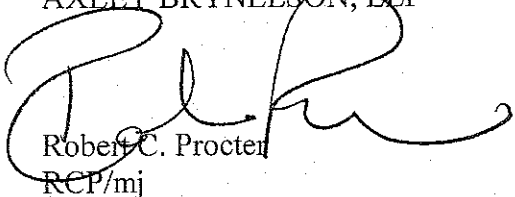
It may be appropriate to allow higher decibels in a true commercial area; however, this is a residential area on Lake Waubesa. Christy's Landing is a non-conforming use. Rezoning it to C-1 Commercial does not transform the entire neighborhood into commercial uses. Allowing 85 decibel amplified concerts has a significant, adverse effect on Mr. Lindsay's enjoyment of his home and on its value.

Based on these facts, the Town's and ZLR's determination that the Applicant met the condition set forth at Section 10.255(2)(h)2 necessary to approve a conditional use was clearly erroneous. The Board should reverse the Town's and ZLR's decision, and deny the Conditional Use Permit.

Please notify us of the date, time and place that the Dane County Board sets for the hearing.

Sincerely,

AXLEY BRYNELSON, LLP



Robert C. Procter
RCP/mj

Attachment

cc: Scott McDonell, Dane County Clerk
Attorney Matt Fleming
Mr. Bruce Lindsay

Municipality: town of Kurin
County: Dane
Assessment Year: 2013

I, Dean Peters hereby amend the assessment
(Name of Property Assessor)
Associated Appraisal Consultants, Inc
regarding 0610-053-7056-4
(Parcel Number)

also known as: 2946 Waubesa Ave, Madison WI 53711
(Street Address, if applicable)

for the above assessment year as follows:

Initial Assessment	Amended Assessment
Land <u>200,000</u>	Land <u>150,000</u>
Improvements <u>157,700</u>	Improvements <u>124,000</u>
Total <u>357,700</u>	Total <u>274,000</u>

This property: is is not (check applicable box)

subject to a Conversion Charge under sec. 74.485, Wis. Stats.

Dean Peters
Assessor (Signed)

6/21/2013
Date

WAIVER

I, Bruce B. Lindsay, forfeit and waive the further right
(Name of Property Owner)

to receive notification of this changed assessment 15 days before the Board of Review. I understand I may still proceed with an appeal to the Board of Review, following the requirements provided under sec. 70.47, Wis. Stats. I understand that more detailed assessment objection procedures can be found in the Property Assessment Appeal Guide or on the back of the initial Notice Of Assessment (PR-301A).

[Signature]
Property Owner/Agent (Signed)

6-21-2013
Date

Copies to: Property Owner/Agent Assessor Municipality

Robert C. Procter

From: Robert C. Procter
Sent: Thursday, March 20, 2014 11:35 AM
To: Robert C. Procter
Subject: RE: Assessed value - 2946 Waubesa Ave

Attorney Robert C. Procter

Axley Brynelson, LLP
d: 608.283.6762 | c: 608.692.8270
RProcter@axley.com

V-CARD | WEB | MAP

2 E. Mifflin St., Ste 200 • Madison, WI 53703 • P.O. Box 1767 • 53701-1767 • Fax: 608.257.5444

----- Forwarded Message -----

From: Erica Schmitz <eschmitz@town.dunn.wi.us>
To: Bruce Lindsay <brucelindsay@sbcglobal.net>
Sent: Monday, December 30, 2013 11:25 AM
Subject: FW: Assessed value - 2946 Waubesa Ave

Hello Bruce,

Following our Plan Commission meeting last month, we've been gathering records to be sure we have all the correct and up-to-date information. We asked the assessor to provide an explanation of the reduced assessment on your property. Below, you will find his response.

Thanks,
Erica

From: Cathy Hasslinger
Sent: Friday, December 20, 2013 11:57 AM
To: Erica Schmitz
Subject: FW: Assessed value - 2946 Waubesa Ave

From: dean peters [<mailto:deanp.apraz@gmail.com>]
Sent: Friday, December 20, 2013 11:51 AM
To: Cathy Hasslinger
Subject: Assessed value - 2946 Waubesa Ave

Cathy,

I'm writing in regard to the reduced assessment for the property owned by Bruce Lindsay at 2946 Waubesa Avenue (parcel 0610-053-7056-4). In 2013 the property owner asked me to review the assessed value based on

a number of factors that may have been causing a negative impact on the market value of the property. After viewing the property in June of 2013, I reduced the assessed value from \$357,700 to \$274,000.

You have asked me to provide an estimate of how much of this reduction was attributed to the negative impact of volleyball and lights at the neighboring commercial property (Christie's Landing). The overall reduction in assessment included a consideration of changes in market conditions, physical deficiencies in the home, and the effect of restrictions imposed by DNR shoreland protection laws, as well as the impact of the property's location adjacent to Christie's Landing. Due to the complexity of these various factors, it is difficult to isolate the exact amount of negative impact specifically caused by the lights and volleyball activity at Christie's Landing. However, in my estimation, approximately \$25,000 of the reduced assessment could be attributed to the activities at Christie's Landing.

I hope this information is helpful. Please let me know if I can be of any further assistance in this matter.

Dean W. Peters
Director of Project Management
Associated Appraisal Consultants, Inc.
Phone: (920) 749-1995
Fax: (920) 731-4158
For Property Search: <http://www.apraz.com/>

This message is intended for the sole use of the individual and entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended addressee, nor authorized to receive for the intended addressee, you are hereby notified that you may not use, copy, disclose or distribute to anyone the message or any information contained in the message. If you have received this message in error, please immediately advise the sender by reply email and delete the message.