

BEFORE THE DANE COUNTY BOARD OF ADJUSTMENT

Determination of a ministerial error for the boundaries of CUP #1632 Tyrol Basin

BRIEF OF DANE COUNTY ZONING ADMINISTRATOR

The intent of this determination is to point out that a ministerial error appears to have been made with the processing of Conditional Use Permit #1632. The permit allows the property located at 3487 Bohn Road to be illuminated at night. The property is home to the Tyrol Basin Ski resort which is currently owned by Tyrol Holdings, LLC. When the final permit document was produced for CUP #1632, the permit identified only a few portions of the property rather than the entire property. It appears that the permit may need to be corrected to support the intended approval.

In 2000, the Tyrol Basin Corporation submitted a conditional use permit application intending to ratify the scope of activities for its existing ski resort at 3478 Bohn Road. Although the ski operation was in business since the 1950's, and being illuminated at night since the 1980's, this conditional use permit would consolidate previous approvals into one document. The Tyrol Basin Corporation had been working with the Town of Vermont for almost two years on an agreement for the limitations on the resort operations. Conditional Use permit #1632 would be a vehicle to validate the agreement.

I reviewed the historic file for CUP #1632. It was found that the application for CUP #132 contains all of the parcel identification numbers for the entire property. The application states that the CUP is for 121.5 acres of land. Also, the application lists the intent is for, "...all contiguous RE-1 Zoned Tyrol Basin Corp. property subject to uniform Town and County conditional use limitations...". It appears from the contents of the application that the entire property owned was to be included in the CUP boundaries. See attached application, Exhibit A, and a map showing parcel numbers, Exhibit B.

The file also contained a letter of intent from Attorney Jesse Ishikawa. The letter states the purpose of the application and identifies that the entire property owned by Tyrol Basin is to be illuminated by night is part of the proposed CUP. See attached Exhibit C.

The Staff report for the CUP #1632 also makes reference to the intended boundaries of conditional use permit. The report identifies that the CUP will "Bring all RE-1 zoned property owned by Tyrol Basin Corp. under the following uniform Town and County conditional use limitations for outdoor lighting". Once again, it appears that the entire property was to be part of the conditional use permit. See Exhibit D.

The meeting minutes were reviewed. When the Dane County Zoning and Natural Resource Committee approved CUP #1632 on December 12, 2000, there is no mention of any alterations to the boundaries of the proposed conditional use permit. See attached Exhibit E.

Upon further investigation, the legal description that was used for CUP #1632 matches the legal description for a previous zoning petition/conditional use permit 7263/1505. The previous approval actually only pertained to portions of the Tyrol Basin property. It appears that the legal description for 7263/1505 was erroneously used for describing the property boundaries for CUP #1632. See attached Exhibit F and G.

Summary

When the final document for CUP #1632 was crafted, it appears that the legal description for previous approval was used for the permit rather than a description for the entire Tyrol Basin property. In view of the materials associated with CUP #1632, a ministerial error was made by placing the incorrect legal description on CUP #1632. The legal description for CUP #1632 should be changed to reflect all of the Tyrol Basin's property.

Documentation

- Conditional use permit application for CUP #1632
- Letter of intent for CUP #1632
- Staff Composite Report for CUP #1632
- CUP #1505
- CUP #1632
- Recorded deed restriction

Finding of Fact

I respectfully request that the Dane County Board of Adjustment make the following Findings of Fact:

1. The conditional use permit application for CUP #1632 lists parcel numbers associated with the conditional use permit. The parcel numbers identify all properties owned by Tyrol Basin. The application identifies that the CUP is for 121.5 acres of land. The conditional use permit application also identifies the intent of the CUP is for , "...all contiguous RE-1 Zoned Tyrol Basin Corp. property subject to uniform Town and County conditional use limitations...."
2. The letter of intent dated March 7, 2000 from Attorney Jesse Ishikawa regarding proposed CUP #6132 identifies the that the request is for exterior lighting for all of Tyrol Basin's RE-1 property.
3. The Dane County Staff Composite Report for CUP #1632 identifies that the CUP will "Bring all RE-1 zoned property owned by Tyrol Basin Corp. under the following uniform Town and County conditional use limitations for outdoor lighting".
4. The Dane County Zoning and Natural Resources Committee minutes for the approval of CUP #1632 does not reference any changes for the boundary description of CUP #1632.
5. Conditional Use Permit #1632 was issued by Dane County Zoning and Natural Resources Committee to the property located at 3478 Bohn Road in the Town of Vermont on December 12, 2000.
6. The document for Conditional Use Permit #1632 lists a boundary for only a portion of the Tyrol Basin property.
7. The document for Conditional Use Permit #1632 lists the same boundaries as approval 7263/1505.

Conclusion

With the aforementioned evidence, I respectfully request that the Dane County Board of Adjustment make the following conclusion:

1. The document for CUP #1632 lists the incorrect boundary description for the conditional use permit. It appears that the legal description for approval 7263/1505 was used instead of a description for the entire property.
2. Conditional Use Permit #1632 covers the entire 125.3 acres of land owned by Tyrol Basin as described under Register of Deeds document #3252304.
3. The Zoning Administrator shall be instructed to change the boundary description found on Conditional Use Permit #1632 to identify the entire 125.3 acres owned by Tyrol Basin.
4. Conditional Use Permit #1632 applies to the entire property and remains in effect.

Rezone/C.U.P. Application Information

NUMBER 7858 / 1632

GENERAL INFORMATION PUBLIC HEARING DATE: May 23 2000 D.E.D. YES as per SIR

1. TOWN, VILLAGE, OR CITY
Town of Vermont COUNTY **DANE**

2. THIS NOTICE IS FOR: REZONING CONDITIONAL USE / SPECIAL EXCEPTION

3. OWNER'S NAME AT TIME OF REZONING
Tyrol Basin Corp. TELEPHONE
(608) 437-4135

OWNER ADDRESS
3487 Bohn Road, Mount Horeb, WI 53572

AGENT Jesse S. Ishikawa TELEPHONE
Reinhart, Boerner, Van Deuren, Norris & Rieselbach, s.c. (608) 229-2200

AGENT ADDRESS
22 East Mifflin St., Ste. 600, Madison, WI 53703

4. DESCRIPTION OF PROPERTY WHICH WAS GRANTED THE REZONING OR CONDITIONAL USE / SPECIAL EXCEPTION PERMIT
SE 1/4 SE 1/4 Sec. 28 and
1/4 1/4 Sec. SE 1/4 NE 1/4 | Sec. 33 | Town T7N | Range R6E

PARCEL NUMBER(S) BEFORE REZONING
30-0706-284-9011-1; 30-0706-284-9840-8; * PREVIOUS ZONING DISTRICT RE-1 NEW ZONING DISTRICT RE-1

PARCEL ADDRESS
3487 Bohn Road, Mount Horeb, WI 53572

INTENT / PURPOSE For Pet. 7263
Petition for termination of Deed Restriction recorded with the Dane County Register of Deeds Office on November 25, 1998 as Document No. 3050476, attached. Also, to have all contiguous RE-1 Zoned Tyrol Basin Corp. property subject to uniform Town and County conditional use limitations for outdoor lighting as defined in the attached proposed C.U.P.
*30-0706-331-9590-3; 30-0706-331-9010-4 - 331-8000, 331-8500

LAND AREA AND IMPROVEMENTS

5. TOTAL ACRES IN PARCEL BEFORE REZONING 19.39 rezoning and 121.5 C.U.P. TOTAL ACRES IN PARCEL IN EXCLUSIVE AG. ZONE BEFORE REZONING 0

a. Of the original parcel, how many acres were rezoned OUT OF agricultural use or granted a non-Ag conditional use/special exception? 0

b. How many acres were rezoned INTO exclusive agricultural district? 0

c. Were there improvements on the original parcel? YES NO

d. What percentage of the improvements was rezoned or granted a conditional use/special exception? 100%

REZONE

6. REASON FOR REZONING

a. Develop land for non-Ag. residential use.

How far is the land from a city or village boundary? _____ MILES How far is the land from an existing residential area? _____ MILES

Is the land served by public sewer? YES NO Is the land within a sanitary district? YES NO

Is the land served by public water? YES NO Is the land within a planning transition area? YES NO

If more than one lot was developed - number of lots: _____ Average lot size: _____

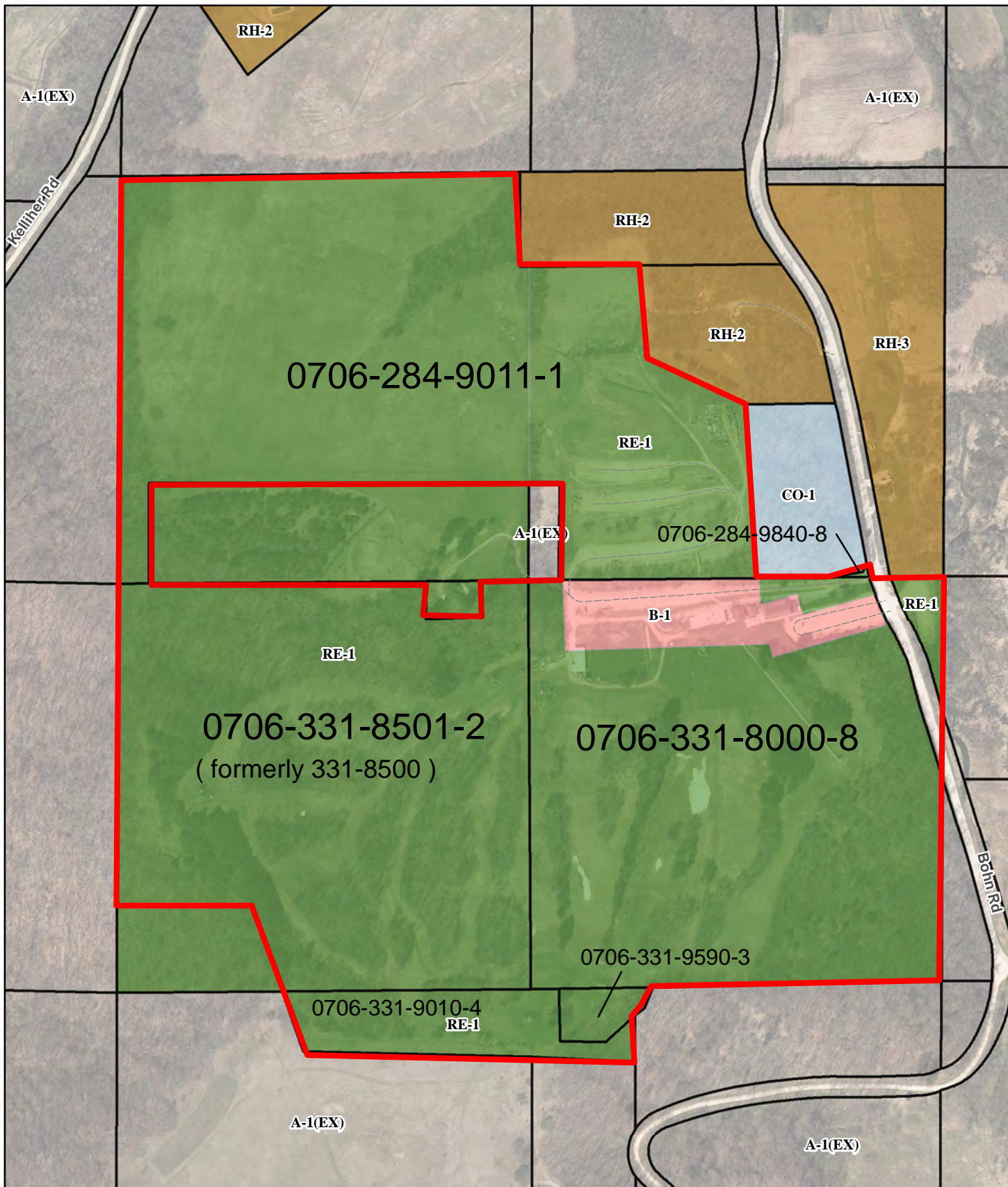
b. Develop land for industrial use f. Farm consolidation

c. Develop land for commercial use g. Residence for parent or child of farm operator

d. Develop land for recreational use h. Other (please specify) remove existing deed restrictions

e. Pre-existing use, substandard or nonconforming parcel

Exhibit A



Legend

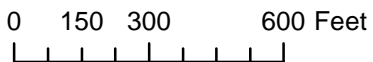


Exhibit B

Tyrol Basin property
parcel numbers

REINHART | BOERNER | VAN DEUREN
NORRIS & RIESELBACH, S.C.

ATTORNEYS AT LAW

March 7, 2000

VIA MESSENGER

Mr. James Gregorius
Zoning Administrator
Planning and Development
City-County Building, Room 116
210 Martin Luther King, Jr. Boulevard
Madison, WI 53709



Dear Mr. Gregorius:

Re: Tyrol Basin Corporation Approvals

We represent Tyrol Basin Corporation.

We are asking that you schedule the following matters for consideration by the Zoning and Natural Resources Committee:

(a) A Petition for Termination of Deed Restrictions. A set of restrictions affecting certain properties owned by Tyrol Basin Corporation was recorded as Document No. 3050476. A copy of these restrictions is enclosed. The history of these restrictions is as follows: In 1998, Tyrol Basin Corporation purchased land for the purpose of building additional parking lots. As a temporary condition of allowing the rezoning of 14 acres from AG-1E to RE-1, the Town of Vermont required a deed restriction for the new RE-1 land limiting it to "parking only." This allowed Tyrol Basin to construct parking lots while continuing negotiations on the more comprehensive Deed of Covenants and Restrictions.

We have now reached agreement with the Town of Vermont on the Deed of Covenants and Restrictions, which eliminates the need for the deed restrictions recorded as Document No. 3050476. The new Deed of Covenants and Restrictions is before the Committee as part of C.U.P. #1540 and zoning #7464. In order for the deed restrictions to be

22 East Mifflin Street Suite 600 P.O. Box 2020 Madison, Wisconsin 53701-2020 Telephone (608) 229-2200 Facsimile (608) 229-2100

Denver, CO
(303) 831-0909

Madison, WI
(608) 229-2200

Milwaukee, WI
(414) 298-1000

Exhibit C

Mr. James Gregorius
March 7, 2000
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terminated, the County Board must approve a petition for termination of the restrictions. Under the terms of the deed restriction, the petition must be submitted to the Dane County Clerk, who shall refer the petition to the Dane County Zoning and Natural Resources Committee which shall schedule and hold a public hearing on the petition; furthermore, the approval must then be given by the county board. The termination also requires approval of the town board. We will request that the Town grant its approval to terminating the restriction recorded as Document No. 3050476. We anticipate that the Town will approve of such termination, conditioned upon Tyrol Basin executing the Deed of Covenants and Restrictions.

To comply with the requirement of the deed restriction, we are filing a duplicate original of the Petition for Termination of Deed Restrictions with the Dane County Clerk.

(b) RE-1 conditional use permit for exterior lighting. Tyrol Basin Corporation is proposing a comprehensive use permit for all of its RE-1 zoned property which would cover existing RE-1 property under conditional use permits 682 and 1505, and for property that was acquired in 1998 which is now zoned RE-1, with no applicable conditional use permit.

The Town of Vermont has agreed to this conditional use permit, subject to the filing of the comprehensive Deed of Covenants and Restrictions. Again, we will seek written confirmation of this from the town prior to the public hearing that we are asking you to schedule.

In support of these requests, we are enclosing a C.U.P. Application, which covers both the termination of the deed restrictions and the new conditional use permit for exterior lighting, with supporting attachments. We respectfully request that you schedule this for an April 25 public hearing.

Mr. James Gregorius
March 7, 2000
Page 3

If you need any further information, or would like to meet with me to go through these materials in advance of the public hearing, please call.

Yours very truly,



Jesse S. Ishikawa

MADISON\60825JSI:MW

Encs.

cc Dane County Clerk (w/encs.)
Mr. Donald McKay (w/encs.)
Mr. Mark Hazelbaker (w/encs.)
Ms. Jane Hanson (w/encs.)

ITEM #16

Amend Deed Restrictions and Conditions previously imposed on lands in the RE-1 District Tyrol Basin Corp., owners; Jesse Ishikawa, attorney, agent Vermont 28 and 33

Background

The petition and CUP application would accomplish two objects:

1. "Terminate" the Deed Restrictions recorded as a requirement for completion of previous rezone Pet. 7263. This would rescind the Conditions of that CUP in regard to lighting on a 4.85-acre ski slope area added along the south boundary of Tyrol Basin in 1998 (areas "A" and "B"). It would also permit a 14.54-acre area ("C") to be used for purposes other than a parking lot.

NOTE: The Deed of Covenants and Restrictions agreed upon by the Town of Vermont and Tyrol Basin Corp. and approved as Deed Restrictions to a previous rezone by Tyrol Basin Corp -- Pet. 7464 -- would supercede the terminated deed restrictions if adopted for Pet. 7464 or for Pet. 7858, or both.

2. Bring all RE-1 zoned property owned by Tyrol Basin Corp. under the following uniform Town and County conditional use limitations for outdoor lighting:
 1. The lighting shall be limited to outdoor snow sports areas.
 2. The lights shall be installed and/or maintained in a manner (including hoods or shield) so as to minimize direct illumination of adjoining property and the night sky.
 3. Hours of operation of outdoor lighting shall be limited to 11:30 p.m. when the facility is open for recreational purposes.
 - a. An additional one half hour shall be allotted for the orderly clearance of the slopes and departure of patrons.
 - b. The lighting may be continued beyond this hour up to six times per year with review and approval by the Town Board.
 4. Partial lighting is permitted for maintenance. Grooming, and snowmaking when the slopes are otherwise closed.

NOTE: This CUP is intended to supercede lighting restrictions adopted under previous CUP's 682 and 1505, in addition to applying to the entire RE-1 zoned Tyrol Basin Corp. property. The CUP would not apply to the B-1 Local Business-zoned area within the Tyrol Basin property, which would have its own Conditions under CUP 1540, a pending application by Tyrol Basin Corp. The CUP also would not apply to the RE-1/A-1EX zoned property owned by Ross & Joanne Reinhold, which constitutes a 10+ acre "island" inside the Tyrol Basin Corp. holdings.

Note: Bohn Creek, with associated Floodplain, is located across Bohn Road within 300 feet of the B-1 zoned areas.

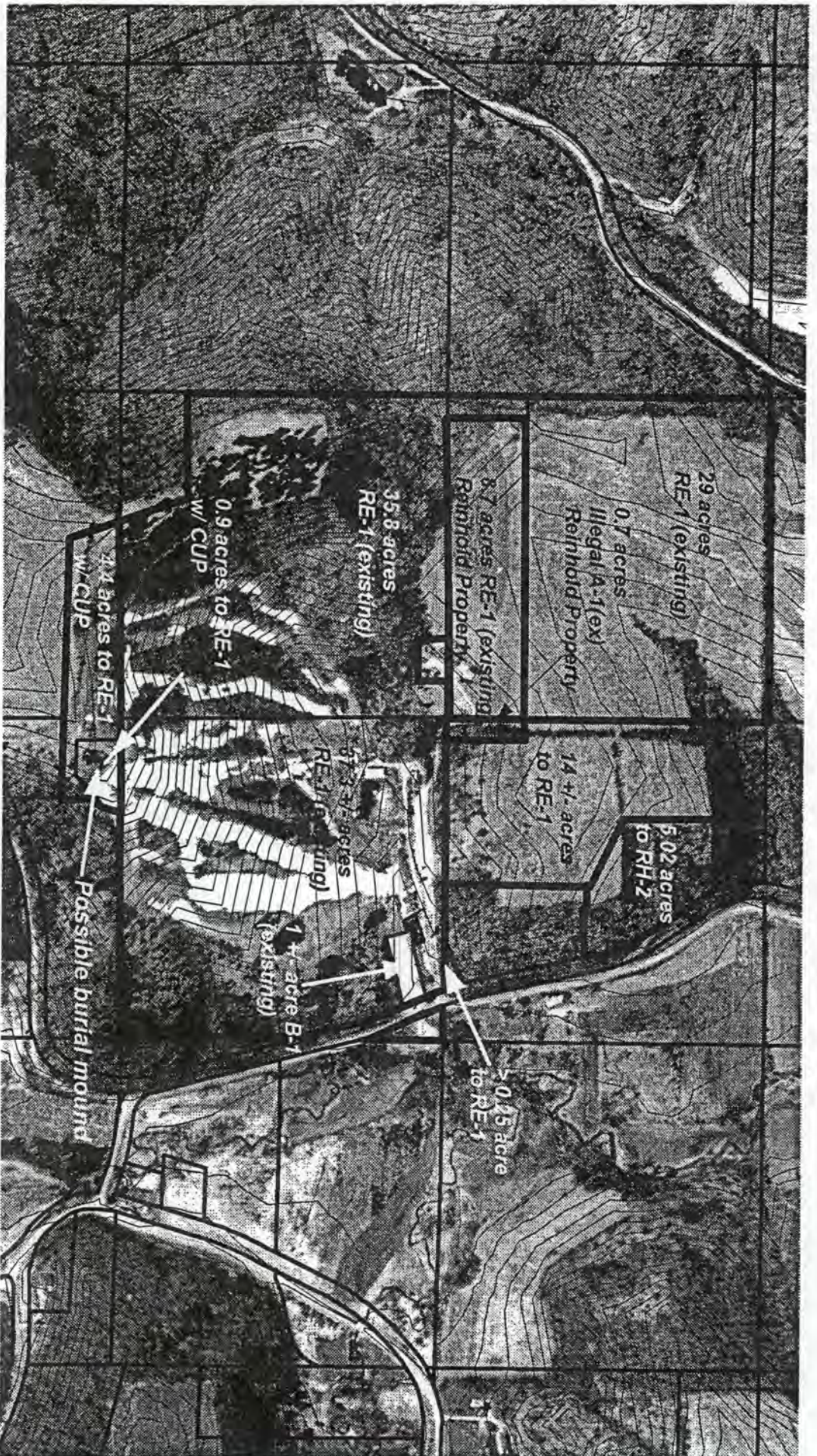
Additional Information

An orthophoto map of the subject property is on the following page.

Exhibit D

Petitions 7262 & 7263/ CUP 1505
Tyrol Basin, Inc.

Town of Vermont
Sections 28 & 33



Scale: none



05/17/2000

**HISTORY – LAND HELD BY TYROL BASIN CORP (TBC) AND OTHERS
IN SECTIONS 28 & 33, TOWN OF VERMONT**

Pet. 883, effective 1966: Owner Sandy Stevenson rezoned 120+- acres from A-1EX to RE-1. (Stevenson owned additional, abutting lands zoned A-1EX. (Green outline on map.)

1966-1988:

Stevenson sold 90+- acres zoned RE-1 to Reinhold, who built a house.

1988:

- TBC bought back 80 acres zoned RE-1 from Reinhold (the N ½ NE ¼ Sect. 33.)
- Reinhold kept 9.24 acres in Sec. 28, plus a 120'x181.5' acre piece of land extending into Sect. 33 zoned RE-1. The Sec. 33 piece provided the required rear yard setback for the house. (Pink outline on map.)
- Reinhold also acquired a 100'x300' parcel zoned A-1EX at the east end of the 9.24 acre parcel from Stevenson. *This A-1EX parcel is illegal.* (Solid pink on map.)
NOTE: Pink areas – outlined RE-1 and solid A-1EX – are currently owned by Reinhold – about 10 acres total. The zoning status of the Reinhold lands is in question: Is Reinhold's house on this property 'grandfathered' as built before 1988? Is Reinhold an "owner or caretaker of a permitted use in the RE-1 Recreational District" as per 10.10.10(1)(e)? Is there any recreational use on this 10 acres? ← No
- In exchange, Stevenson kept a 100'x300' parcel at the west end of the 9.24 acres to provide access to his 30 acres zoned RE-1 in Sec. 28.
- TBC acquired an irregular 150'x300' overall piece zoned A-1EX from the landowner to the South, Kreuger. (Yellow "A" on map.) This parcel should have been rezoned to RE-1 at the time; it was later rezoned to RE-1 under Pet. 7263. NOTE: There is a possible burial mound on this parcel – see aerial photo.

Pet. 4293 effective 09/06/1988 / CUP 682 effective 09/27/1988

- Pet. 4293 rezoned a small area in Sec. 33 from RE-1 to B-1.
- CUP 682 permitted sales of alcoholic beverages in the B-1 District and Outdoor lighting of the ski slopes in the RE-1 district, subject to Conditions – see attached.
- *The 150'x300' area (Yellow "A") land added in 1988 was used for lighted ski slopes, but was not included in the CUP area.*

1992

- TBC acquired a 205+'x1058+' area zoned A-1EX from Krueger. (Yellow "B" on map, adjacent to "A" described above.) This parcel should have been rezoned to RE-1 at the time; it was later rezoned to RE-1 under Pet. 7263.
- In exchange, Krueger got a 283'x530+' irregular parcel zoned RE-1 in the SW corner of the ski area. (Blue outline on map.) *This parcel should have been rezoned to A-1EX, since it became part of Kreuger's 120+ acre farm.*

1997

TBC bought 49 acres from Stevenson, including 30+- acres in Sec. 28 zoned RE-1 and 19+- acres zoned A-1EX. The 19 acres was an illegal parcel in A-1EX, and should have been rezoned at the time; it was later rezoned to RE-1 under Pet. 7263 for parking lot use only.

(Pet. 7126, effective 04/02/1998 – Stevenson rezoned a remainder parcel, located immediately east of the 19 acres purchased by TBC, to CO-1 Conservancy, to avoid having an illegal A-1EX parcel.)

(Pet. 7262, effective 10/12/1998 – TBC rezoned 5 acres to RH-2. Currently owned by TBC. Possibly used as ski area manager's house.)

Pet. 7263, effective 11/25/1998 w/ D.R.'s / CUP 1505, effective 12/08/1998 w/ Cond.'s

- Rezoned areas "A" and "B" described above from A-1EX to RE-1. These two parcels, totaling 4.85 acres, were part of the existing, lighted ski slope area at that time. They were rezoned subject to a Deed Restriction to "maintain the current conditions of the Conditional Use Permit and memorandum of understanding." See copy of memorandum of understanding attached.
- Also rezoned areas "C" and "D" on map from A-1EX to RE-1, subject to a Deed Restriction requested by the Town, that "the 14.54 acre rezone area ["C"] shall be utilized for a parking lot area only." Area "D" was acquired from Stevenson to expand TBC's driveway to the B-1 and parking areas.
- CUP 1505 applied to parcels "A" and "B" only (not "C",) with Conditions for lighting (see attached.)

Pet. 7464 / CUP 1540 – 01/26/1999 ZNR Comm. Public Hearing

Amended to include D.R.'s 05/09/2000

RE-1 to B-1 with Conditional Use Permits for 1.) conference and convention centers, 2.) more than two outdoor sales events per year, and 3.) recreational facilities affiliated with a permitted B-1 use and lighted to operate at night.

Tyrol Basin Ski Area asked to expand their existing 1.2 acre B-1 zoned area by 2.8 acres to 4.0 acres total in B-1. The 2.8 acre area being rezoned includes four buildings "used for ski equipment rental, first aid, lift ticket sales, and ski instruction..." and associated parking and service roads. Proposed uses include "sale of alcoholic beverages, food service and retail sales of ski, snowboard, and related gift shop items" which are permitted uses in the B-1 district. In addition, Tyrol Basin asked to add the above CUP uses to both the existing and proposed B-1 areas (the full 4 acres.) They proposed limitations on: Sale of alcoholic beverages; Installation of speakers beyond a distance of 75 feet from the buildings; Use of facilities for conventions, conferences, etc. and sales events of less than 4 days in duration; and outdoor lighting -- all within the expanded B-1 area.

05/09/2000 -- The ZNR Comm. approved Pet. 7464, subject to a Deed of Covenants and Restrictions drafted by the Town of Vermont July 12, 1999 (see attached.)

05/18/2000 – The County Board will receive the ZNR Comm.'s recommendation to approve Pet. 7464.

Pet. 7464 must be approved by the Co. Board, signed by the Co. Exec., and approved as amended by the Township; then the Deed Restrictions must be recorded to make the rezone petition effective.

CUP 1540 for the uses listed above was approved by the Town of Vermont, subject to Conditions, and would be considered by the ZNR Comm. after Pet. 7464 becomes effective.

CURRENT PETITION

16. 7858/ CUP 1632 Tyrol Basin Corp., owners, Jesse Ishikawa for Reinhart, Boerner, Van Deuren, Norris & Reiselbach, S.C., attorneys, agents, Vermont 28 and 33, Amend the Deed Restrictions and Conditions previously imposed on lands in the RE-1 Recreational District

The petition and CUP application would accomplish two objects:

1. "Terminate" the Deed Restrictions recorded as a requirement for completion of previous rezone Pet. 7263. This would rescind the Conditions of that CUP in regard to lighting on a 4.85 acre ski slope area added along the south boundary of Tyrol Basin in 1998 (areas "A" and "B.") It would also permit a 14.54 acre area ("C") to be used for purposes other than a parking lot.

NOTE: The Deed of Covenants and Restrictions agreed upon by the Town of Vermont and Tyrol Basin Corp. and approved as Deed Restrictions to Pet. 7464, above, would supercede the terminated deed restrictions if adopted for Pet. 7464 or for Pet. 7858, or both.

2. Bring all RE-1 zoned property owned by Tyrol Basin Corp. under the following uniform Town and County conditional use limitations for outdoor lighting:
 1. The lighting shall be limited to outdoor snow sports areas.
 2. The lights shall be installed and/or maintained in a manner (including hoods or shield) so as to minimize direct illumination of adjoining property and the night sky.
 3. Hours of operation of outdoor lighting shall be limited to 11:30 p.m. when the facility is open for recreational purposes.
 - a. An additional one half hour shall be allotted for the orderly clearance of the slopes and departure of patrons.
 - b. The lighting may be continued beyond this hour up to six times per year with review and approval by the Town Board.
 4. Partial lighting is permitted for maintenance. Grooming, and snowmaking when the slopes are otherwise closed.

NOTE: This CUP is intended to supercede lighting restrictions adopted under previous CUP's 682 and 1505, in addition to applying to the entire RE-1 zoned Tyrol Basin Corp. property. The CUP would not apply to the B-1 area, which has its own Conditions under CUP 1540, above. It would not apply to the property owned by Ross & Joanne Reinhold.

Note: Bohn Creek, with associated Floodplain, is located across Bohn Road within 300 feet of the B-1 zoned areas.

Motion by Cornwell/Johnson to approve the amended square footage area (leased area) request to accommodate the six users as approved by the ZNR; the applicant is to provide to the zoning office a revised legal description of the leased area; carried 6-1. Olsen voting no.

i. 7880, Suchomel, Town of Burke, 5/23/00

Motion by Salkin/Hitzemann to impose a deed restriction specifying that the following permitted uses in the C-2 Commercial District are prohibited: (d) sales of new and used mobile homes, recreational equipment rental, sales, and service; (h) bulk fuel storage, sales, and storage of lumber and building material; (i) truck and bus terminals; (k) fertilizer mixing or blending plants; (l) slaughterhouses, meat processing plants; (q) parking or storing of motor vehicles; and (r) storage or processing of scrap or waste materials, conducted entirely within a building and that the buildings are limited to a single level. The applicant shall prepare a full erosion control and stormwater management plan that meets with the approval of the Dane County Land Conservation Department. The applicant shall prepare a detailed landscape plan that meets with the approval of the Dane County Planning and Development Department that fully berms, landscapes with year-round vegetation to be maintained in a living manner, and otherwise completely buffers the site's view from USH 151, in keeping with the intent of the intergovernmental agreement between the City of Sun Prairie and the City of Madison. No development or advertising of any kind will be allowed within 300 feet of the USH 151 southeastern right-of-way boundary. The view of the subject properties from USH 151 shall be that of an open, undeveloped green space, free of any structures or advertising. Furthermore, the plan shall include buffering of the site's eastern border so as to maintain an attractive and well maintained frontage along Reiner Road at the development's entrance off of Reiner Road. Landscaping provisions should be coordinated with the above-mentioned erosion control and stormwater management plan. The applicant shall prepare an intersection design plan for the entrance to the development off of Reiner Road that meets with the approval of the Dane County Highway and Transportation Department; carried 5-2. Cornwell and Olsen voting no.

j. CUP 1632/7858, Tyrol Basin, Inc., Town of Vermont, 5/23/00

Motion by Anderson/Salkin to find that the standards of the zoning ordinance are met; 1) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare, 2) 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, 3) That the establishment of the conditional use will not impeded the normal and orderly development and improvement of the surrounding property for uses permitted in the district, 4) That adequate utilities, access roads, drainage and other necessary site improvements have been or are being made, 5) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets, and 6) That the conditional use shall conform to all applicable regulations of the district in which it is located; carried 7-0.

Exhibit E

k. 7950, Pache, Town of Medina, 8/22/00

Motion by Cornwell and Olsen to impose a deed restriction specifying that the Town of Medina's Notification of Covenants and Restrictions restricting further development to apply to parcels 0812-013-8500-3, 0812-013-9002-4, 0812-024-8440-3, and 0812-024-9500-8. Medina's Notification of Covenants and Restrictions requiring rezoning for parcel 0812-013-8000-8; carried 7-0.

Motion by Cornwell and Olsen to approve as amended; carried 7-0.

l. CUP1630/7847, Grandma's Home Cooking of WIS., Inc., Town of Pleasant Springs, 5/23/00

Motion by Anderson/Salkin to approve the Conditional Use Permit as conditioned;

1. That the tractor trailer parking, temporary drop zone, and area for truck refueling only as designated on "Proposed Addition" map, RSV 9288PROP2.DGN 11/14/00 REV. 11/21/00.

To find that the standards of the zoning ordinance are met; 1) That the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort or general welfare, 2) 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, 3) That the establishment of the conditional use will not impeded the normal and orderly development and improvement of the surrounding property for uses

DANE COUNTY ORDINANCE AMENDMENT NO. 7263

Amending Section 10.03 relating to Zoning Districts in the Town of Vermont.

The Dane County Board of Supervisors does ordain as follows: That the Zoning District Maps of the Town of Vermont be amended to include in the RE-1 Recreational District/s the following described land:

PETITION NUMBER/C.U.P. NUMBER: 7263/1505

Part of the SE 1/4 of the SE 1/4 of Section 28, Town of Vermont, described as follows: Commencing at the Southeast corner of the said Section 28; thence West 591.42 feet to the point of beginning; thence N03°55' West 583.07 feet; thence N62°03'52" West 328.65 feet; thence N02°50' West 290.40 feet; thence N89°46'23" West 384.91 feet; thence S00°10'04" East 697.27 feet; thence East 100.00 feet; thence S00°10'04" East 330.0 feet; thence East 626.43 feet to the point of beginning.

Also, commencing at the Southeast corner of the said Section 28; thence due West along the Section line 203.50 feet to the centerline of Bohn Road and the point of beginning; thence N10°14' West along the centerline of Bohn Road 49.87 feet; thence S79°46' West 33.00 feet; thence S26°20' West 26.85 feet; thence S81° 28' West 129.10 feet to the Section line, thence due East 180.92 feet along the Section line to the point of beginning.

Also, a part of the SE 1/4 of the NE 1/4 of Section 33, Town of Vermont described as follows: Commencing at the Northwest corner of the S 1/2 NE 1/4, thence East 1421.0 feet along the North line of the said S 1/2 NE 1/4 to the point of beginning; thence continue East 300.00 feet along said North line; thence S23° West 60 feet, thence S54° West 155 feet, thence West 150 feet; thence North 150 feet to the point of beginning.

Also, a part of the S 1/2 NE 1/4 of Section 33, Town of Vermont, described as follows: Commencing at the Northwest corner of the S 1/2 of the NE 1/4; thence East 529.6 feet along the North line of the said S 1/2 NE 1/4 to the point of beginning; thence continue East 891.4 feet to a parcel, previously deeded, thence South 150 feet, thence East 150 feet; thence N54° East 100 feet, more or less, to the Westerly line of the East three-fourths of the SE 1/4 of the NE 1/4 of the said Section 33; thence South 104 feet, more or less, to a point which is 195 feet South of the North line of the said S 1/2, NE 1/4; thence West 1058 feet along a line which is 195 feet South of the said North line; thence N18° West 205 feet to the point of beginning.

Exhibit F

CONDITIONAL ZONING

Conditional zoning is hereby imposed pursuant to Section 10.255(3)(a)2.(b) of the Dane County Code of Ordinances. The rezoned area shall be subject to the following conditions.

DEED RESTRICTION REQUIRED

This amendment will be effective, if within 90 days of its adoption by Dane County the owner or owners of the land shall record the following restrictions on said land:

1. The 4.85 acre parcel shall maintain the current conditions of the Conditional Use permit and memorandum of understanding.
2. The 14.54 acre rezone area shall be utilized for a parking lot area only.

Said restriction shall run in favor of Dane County and the pertinent Town Board as well as the owners of land within 300 feet of the site. Failure to record the restrictions will cause the rezone to be null and void.

The Dane County Board of Supervisors does ordain that this amendment, based upon their findings, to be consistent with the provisions of Wisconsin State Statute 91.77 (1)(a),(b),(c).

EAH: 11/25/98

DANE COUNTY
CONDITIONAL USE PERMIT #1632

THE ZONING AND NATURAL RESOURCES COMMITTEE OF THE DANE COUNTY BOARD PURSUANT TO SECTION 10.255(2) OF THE DANE COUNTY CODE OF ORDINANCES DOES HEREBY:

GRANT: The Conditional Use Permit.

FOR: Amend deed restrictions pertaining to lighting.

EFFECTIVE DATE OF PERMIT: 12/12/00 EXPIRATION DATE: (See Below)

THE CONDITIONAL USE SHALL BE LOCATED ON THE PROPERTY DESCRIBED AS FOLLOWS:

Part of the SE 1/4 of the SE 1/4 of Section 28, Town of Vermont, described as follows: Commencing at the Southeast corner of the said Section 28; thence West 591.42 feet to the point of beginning; thence N03°55' West 583.07 feet; thence N62°03'52" West 328.65 feet; thence N02°50' West 290.40 feet; thence N89°46'23" West 384.91 feet; thence S00°10'04" East 697.27 feet; thence East 100.00 feet; thence S00°10'04" East 330.0 feet; thence East 626.43 feet to the point of beginning.

Also, commencing at the Southeast corner of the said Section 28; thence due West along the Section line 203.50 feet to the centerline of Bohn Road and the point of beginning; thence N10°14' West along the centerline of Bohn Road 49.87 feet; thence S79°46' West 33.00 feet; thence S26°20' West 26.85 feet; thence S81° 28' West 129.10 feet to the Section line, thence due East 180.92 feet along the Section line to the point of beginning.

Also, a part of the SE 1/4 of the NE 1/4 of Section 33, Town of Vermont described as follows: Commencing at the Northwest corner of the S 1/2 NE 1/4, thence East 1421.0 feet along the North line of the said S 1/2 NE 1/4 to the point of beginning; thence continue East 300.00 feet along said North line; thence S23° West 60 feet, thence S54° West 155 feet, thence West 150 feet; thence North 150 feet to the point of beginning.

Also, a part of the S 1/2 NE 1/4 of Section 33, Town of Vermont, described as follows: Commencing at the Northwest corner of the S 1/2 of the NE 1/4; thence East 529.6 feet along the North line of the said S 1/2 NE 1/4 to the point of beginning; thence continue East 891.4 feet to a parcel, previously deeded, thence South 150 feet, thence East 150 feet; thence N54° East 100 feet,

Exhibit G

more or less, to the Westerly line of the East three-fourths of the SE 1/4 of the NE 1/4 of the said Section 33; thence South 104 feet, more or less, to a point which is 195 feet South of the North line of the said S 1/2, NE 1/4; thence West 1058 feet along a line which is 195 feet South of the said North line; thence N18° West 205 feet to the point of beginning.

THE ZONING AND NATURAL RESOURCES COMMITTEE AFTER PUBLIC HEARING AND IN THEIR CONSIDERATION OF THE CONDITIONAL USE PERMIT MADE THE FOLLOWING FINDING OF FACT:

1. That the establishment, maintenance and operation of the proposed conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
2. That the uses, values and enjoyment of other property in the neighborhood for purposes already permitted will not be substantially impaired or diminished by the establishment, maintenance and operation of the proposed conditional use.
3. That the establishment of the proposed conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That adequate utilities, access roads, drainage and other necessary site improvements will be made.
5. That adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed conditional use does conform to all applicable regulations of the district in which it is proposed to be located.

EXPIRATION OF PERMIT

Section 10.25(2)(n) of the Dane County Code of Ordinances provides that any use for which a conditional use permit has been issued, upon its cessation or abandonment for a period of one year, will be deemed to have been terminated and any future use shall be in conformity with the ordinance

DEED OF COVENANTS AND RESTRICTIONS

Document Number

Document Title

DANE COUNTY
REGISTER OF DEEDS

3252304

09-20-2000 1:46 PM

Trans. Fee

Rec. Fee 22.00
Pages 7

000482

Recording Area

Name and Return Address

Jesse S. Ishikawa
Reinhart, Boerner, Van Deuren,
Norris & Rieselbach, s.c.
P.O. Box 2018
Madison, WI 53701-2018

see attached

Parcel Identification Number (PIN)

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clauses, legal description, etc. may be placed on this first page of the document or may be placed on additional pages of the document. Note: Use of this cover page adds one page to your document and \$2.00 to the recording fee. Wisconsin Statutes, 59.517. WRDA 2/96

7/22

000483

Document No.

Tax parcel #'s:

DEED OF COVENANTS AND RESTRICTIONS

Tyrol Basin Corporation, a Wisconsin business corporation, (herein known as "Tyrol") grants, conveys, and imposes the following deed of covenants and restrictions against that real estate lying in the Town of Vermont, Dane County, Wisconsin which is described in Exhibit A, attached hereto. The foregoing real estate shall be known herein as the "Property." All references herein to the Dane County Zoning Ordinance refer to the Dane County Code of Ordinances which was in force on the date of execution of these covenants.

1. Tyrol shall not use those portions of the Property which are zoned B-1 pursuant to the Dane County Zoning Ordinance, Ch. 10, Dane County Code, (hereinafter, the "D.C.C."), for any of the permitted uses listed in that zoning classification other than:

- a. recreational facilities as described in sec. 10.11 (2)(h), D.C.C.;
- b. retail sales and services as described in sec. 10.11 (2)(a), D.C.C.;
- c. private clubs; and
- d. outdoor sales events limited to two (2) per calendar year. For the purpose of determining the number of outdoor sales events, a single event is one which is held on consecutive days of not more four days in duration. These permitted uses, however, shall not include motorized sports or recreation; or, retail sales of goods or services (other than outdoor sales events) which are not related to the activities occurring on the Property.

2. Further, Tyrol shall not use the Property for any of the following uses, except as allowed by the Town of Vermont:

- 1. Residential uses;

2. Buildings which have more than four stories;
3. Motels or hotels;
4. Hospitals, nursing homes, convalescent centers, or extended care facilities;
5. Mobile home parks;
6. Government uses; or
7. Adult book or video stores

000484

3. Tyrol may not use those portions of the Property which are zoned RE-1 for any of the following purposes:

- a. Snowmobile rentals;
- b. Baseball diamonds;
- c. Motorized sports such as, but not limited to, snowmobiling, motocross biking, or all-terrain vehicles.
- d. Shooting, skeet or trap shooting or other use of firearms.
- e. Lighted nighttime events other than: non- motorized snow sports; scheduled parties or events using Tyrol's facilities, but no later than 11:30 p.m. and no more than six (6) occasions per calendar year with prior Town Board approval.

4. Tyrol shall not use any portion of the Property in a manner inconsistent with the following restrictions:

- a. Outdoor lighting for organized activities in the RE-1 and B-1 areas shall be limited to the parking lots, building lights and the downhill slopes, snow slides and cross country ski trails. All new lights, including parking, building, and slope lighting shall be installed and/or maintained in a manner (including hoods or shields) so as to minimize direct illumination of adjoining premises and the night sky. It is acknowledged that no amount of relocation, aiming, or shielding will eliminate direct viewing of some of the lighting. However, if a specific fixture can be identified as posing a concern to a neighbor, Tyrol will review and make modifications if possible or reasonable from both an operational and economic (cost) perspective.
- b. Hours of operation of slope lighting shall be limited to when the facility is open for snow-related recreational purposes. However, partial lighting may be continued after closing provided every reasonable effort shall be made to limit lighting to only those areas or slopes where maintenance, snow making, grooming, or non-revenue generating/non-recreational activities are taking place.
- c. The hours of operation of the facility for snow-related recreational purposes shall be limited to 11:30 p.m. However, an additional one-half hour shall be allotted for the orderly clearance of the slopes and departure of patrons. Notwithstanding this provision, the slopes may be used later than 11:30 p.m. as much as six times per year with Town Board approval.

5. The sale of alcoholic beverages shall be limited to those times when organized activities are taking place, e.g.: skiing, wedding receptions, private parties, seminars, or when food is served in conjunction with the restaurant being open. Carry-out or package sale of alcoholic beverages shall not be permitted. Tavern facilities shall not be advertised as such.

000485

6. Sound Amplification. As used in this section, the term "Base area" means the area which lies within 75 feet of the Chalet and other structures.

- a. Limit On Permanent Installations: There shall be no permanent installation of speakers for the amplification of sound and/or music in the area which is outside the Base area.
- b. Amplified Sound In Base Area: Amplified sound and/or music (for weddings, private parties, or regular Tyrol operations) may be used without restriction in the Base area, provided the volume is kept to reasonable levels.
- c. Amplified Sound Outside Base Area: Temporary use of amplified sound and music for outdoor purposes beyond the Base area, including the slopes, is permitted with the following restrictions: outdoor amplification of sound and music beyond the Base area for special snow events will be permitted from 9:00 a.m. to 7:00 p.m. fifteen (15) days of the period running from November 15 to April 15. Outdoor amplification of sound and music after 7:00 p.m., or for more than an annual total of fifteen (15) days, may be allowed upon prior review and approval of the Town Board. The sound level shall be kept at all times at reasonable levels.
- d. "Reasonable levels" shall initially be defined as noise which does not exceed the following decibel levels ("dB") measured using "A" weighting over a 30-second average, at a point 30 feet from the source of the noise:
 - i. In the area zoned B-1, 85 dB.
 - ii. For winter sports activities in the day time, 95 dB.
 - iii. For special events held during the day, 90 dB.
 - iv. For night time special events, 85 dB.
 - 1. In the event that the Town and Tyrol agree to impose different sound amplification regulations by separate agreement, the regulations in such separate agreement shall control.
- e. Outdoor amplification of sound and music beyond the Base area for special events, including weddings or private parties, may be allowed upon prior review and approval of the Town Board.

7. Adequate on premise parking will be available in upper and lower parking lots. When necessary, Tyrol will provide personnel to direct parking, maintain orderly traffic control, and maintain open access to emergency vehicles.

8. These covenants shall be construed in accordance with the law of Wisconsin. In the event that the Dane County zoning ordinance is amended, repealed or no longer in

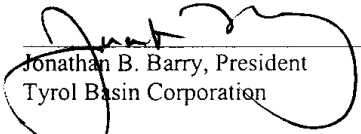


effect, then these covenants shall be reopened for negotiation with the Town of Vermont so as to incorporate references to the successor zoning regulations, if any. It is understood that the property owner retains all property rights the owner possessed prior to the execution of these covenants which have not been expressly restricted in these covenants.

000486

- 9. Interpretation.
 - a. These covenants shall run with the land and be binding upon subsequent owners of the Property.
 - b. These covenants are made in favor of, and shall be enforceable by, the Town of Vermont, and may be modified or released only by a written document recorded with the permission of the Town of Vermont, notwithstanding any provision of the Dane County Code to the contrary.
 - c. Either party to these covenants may request that the other party meet and discuss the substance of these covenants to address changed conditions in the Town or the operation of Tyrol, particularly, issues as to noise and lighting. The duty to meet and discuss does not require either party to agree to modification of these covenants. The parties may not be required to meet to discuss these covenants until April 30, 2001, and thereafter, not more than once in any two-year period.
 - d. These covenants shall be in effect for a term of twenty five (25) years, after which time they shall be renewed for a like period of time unless Tyrol and the Town of Vermont negotiate and agree upon a successor covenant and record a document releasing the covenants stated herein.

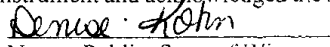
In witness whereof, I affix my signature, this 18 day of September, 2000.


 Jonathan B. Barry, President
 Tyrol Basin Corporation

ACKNOWLEDGEMENT

STATE OF WISCONSIN)
) SS.
 DANE COUNTY)

Personally came before me this 18th day of September, 2000, the above-named Jonathan B. Barry, to me known to be the President of Tyrol Basin Corporation, and to me known to be the person who executed the foregoing instrument and acknowledged the same.


 Notary Public, State of Wisconsin
 My Commission: February 2, 2003

This document was drafted by Attorney Mark B. Hazelbaker, Sun Prairie, WI.



EXHIBIT A

LEGAL DESCRIPTION (125.3 +/- acres)

000487

Part of the NE 1/4 of Section 33, and part of the South 1/2 of the SE 1/4 of Section 28, all in T7N, R6E, Town of Vermont, Dane County, Wisconsin, described as follows: Beginning at the Northeast corner of the said Section 33; thence due West along the Section line 203.50 feet; thence N10°14'W 49.87 feet; thence S26°20'W 26.85 feet; thence S81°28'W 129.10 feet; thence West 207.00 feet to the Southwest cor. of CSM No. 8857; thence S4°28'E along the B-1 zoning line 72.83 feet; thence N75°12'E 128.00 feet; thence S14°48'E 68.00 feet; thence N75°12'E 245.00 feet; thence S14°48'E 107.00 feet; thence S75°12'W 373.00 feet; thence N14°48'W 55.00 feet; thence S88°18'47"W 655.29 feet; thence N2°08'W 208.06 feet; thence East along the Section line 626.43 feet to the Southwest cor. of CSM No. 8857; thence N3°55'W 583.07 feet; thence N62°03'52"W 328.65 feet; thence N2°50'W 290.40 feet; thence N89°46'23"W 384.91 feet; thence N0°10'04"W 300.00 feet; thence N89°46'23"W 1327.30 feet; thence S0°34'24"W 1332.57 feet to the South 1/4 corner of Section 28; thence South along the N-S 1/4 line to a point which is 283 feet North of the Southwest corner of the North 1/2 of the NE 1/4 of Sec. 33; thence East 437.7 feet; thence Southeast 297.50 feet to a point which is 529.6 feet East of the said Southwest corner; thence S18°E 205 feet; thence East 1058 feet; thence North 104 feet along the Westerly line of the East 3/4 of the SE 1/4 of the NE 1/4 of Section 33; thence N54°E 55 feet; thence N23°E 60 feet; thence East along the South line of the North 1/2 of the NE 1/4 to the Southeast corner thereof; thence North 1320 feet to the point of beginning.

AND

Part of the NE 1/4 NE 1/4, Section 33, T7N, R6E, Town of Vermont, described as follows: Commencing at the Northeast corner of the said Section 33; thence N 87°51'36" West 220.72 feet; thence S 83°51'24" West 378.02 feet; thence S 14°48' East 41.78 feet to the point of beginning. Thence N 75°12' East 128 feet; thence S 14°48' East 68 feet; thence N 75°12' East 245 feet; thence S 14°48' East 107 feet; thence S 75°12' West 373 feet; thence N 14°48' West 115 feet; thence S 75°12' West 60 feet; thence N 14°48' West 60 feet; thence N 75°12' East 60 feet to the point of beginning. Contains approximately 1 acre.

AND

Part of the NE 1/4 of the NE 1/4 of Section 33, T7N, R6E, Town of Vermont, Dane County, Wisconsin, described as follows: Commencing at the Northeast corner of the said Section 33; thence N 87°51'36" W 220.72 feet; thence S 83°51'24" W 378.02 feet; thence S 14°48' E 41.78 feet to the point of beginning; thence S 75°12' E 60.0 feet;



thence S 14°48' E 60.0 feet; thence S 75°12' E 60.0 feet; thence S 14°48' E 60.0 feet;
thence S 88°18'47" W 655.29 feet; thence N 2°08' W 208.06 feet; thence East along the
section line 626.43 feet to the southwest corner of C.S.M. 8857, thence S 4°28' E 72.83
feet to the point of beginning. Contains 2.82 acres. **000488**

EXCEPT, however, the Reinhold parcel (completely encircled, so an exception is
necessary) as follows: Commencing at the South 1/4 corner of the said Section 28; thence
East 100.00 feet to the point of beginning of this exception, thence N0°34'24"W 330.00
feet; thence East 1320.18 feet; thence S0°10'04"E 330.0 feet; thence West 238.50 feet;
thence South 120 feet; thence West 181.50 feet; thence North 120 feet; thence West to
the point of beginning.

Tax Parcel Nos.: 30-0706-284-9011-1; 30-0706-331-8501-2; 30-0706-331-9590-3;
30-0706-331-9010-4; 30-0706-331-8000-8

