



# **TOWN OF RIB MOUNTAIN**

Where Nature, Family & Sport Come Together

[www.townofribmountain.org](http://www.townofribmountain.org)

3700 North Mountain Road  
Wausau, Wisconsin 54401  
(715) 842-0983  
Fax(715) 848-0186

## **PLAN COMMISSION**

### **OFFICIAL NOTICE & AGENDA**

A meeting of the Town of Rib Mountain Plan Commission will be held on **Wednesday, March 14<sup>th</sup>, 2018; 6:30 P.M. at the Town of Rib Mountain Municipal Center, 3700 North Mountain Road.** The Town Board may attend for purposes of gathering information. Subject matter for consideration and possible action follows:

- 1.) Call to Order
- 2.) Roll Call
- 3.) Minutes
  - a. **Approval of minutes from the 2-14-2018 Plan Commission meeting.**
- 4.) Public Hearing(s)
  - a. **Ben and Nicole Fisher, owners, request conditional use approval to allow for the keeping of bees and chickens at the property addressed 5601 Blackberry Drive. Parcel #34.202807.010.006.00.00. Docket #2018-09.**
- 5.) New Business:
  - a. **Paul Hackel / Riverside Land Surveying, applicant, request a pre-application discussion regarding a potential rezoning and subdivision development. Docket #2018-10.**
- 6.) Correspondence/ Questions/ Town Board Update:
  - a. **Update on short-term rental ordinance discussion. Docket #2018-07.**
  - b. **Discussion on Plan Commission Rules of Order.**
- 7.) Public Comment
- 8.) Adjourn

TOWN OF RIB MOUNTAIN  
PLANNING COMMISSION MEETING  
February 14, 2018

Chairperson Harlan Hebbe, called the meeting of the Plan Commission to order at 6:30 pm. Other Plan Commission members present included Jim Hampton, Laura McGucken, Tom Steele and Jay Wittman. Ryan Burnett was excused. Also present were Community Development Director, Steve Kunst, and Building Inspector / Assistant Zoning Administrator, Paul Kufahl.

MINUTES:

**Motion by Tom Steele, second by Jim Hampton to approve the minutes of the January 24, 2018 Plan Commission meeting, as presented. Motion carried 5-0.**

PUBLIC HEARINGS:

- a. *REI Engineering, agent, requests Precise Implementation Plan approval for a new distribution and retail building at the property addressed 908 Cloverland Lane. Parcel #34.112807.010.020.00.00. Docket #2018-05.*

Community Development Director, Steve Kunst, stated the applicant requests Precise Implementation Plan (PIP) approval for a new light industrial / retail building to house Gustave A Larson and other unidentified tenant(s). Gustave A Larson's current location at 1301 Starling Lane, at the intersection with Rib Mountain Drive, will be demolished to make way for a new three (3) tenant building previously approved. Kunst noted the subject property was rezoned as part of this applicant's General Development Plan (GDP) approval in late 2017, and subsequently approved by the Town Board.

Kunst indicated not much changed from the GDP approval and the only other zoning standard not met by the proposal is the total landscaping points. However, the applicant did not consider exiting plants within the wetland complex which do count towards the total landscape point requirements. Kunst then asked the applicant for clarification on the number of future tenant spaces available.

Mary Volz, Gustave A Larson representative, noted the vacant portion of the building could be one or two additional tenants. She noted the market has indicated it can be easier to lease out 3000-5000 square feet, but would be happy to rent all 10,000 square feet to one tenant.

Jay Wittman, questioned whether the proposed parking was adequate given the Town does not know the other end users. Kunst indicated the parking stalls provided exceeds minimum code requirements for the use and size of the building; however, as new tenants come through for approval we could address additional parking at that time.

Jim Hampton asked for clarification on the 44-inch picket fence requirement. Kunst noted the fence is the code identified typical buffer between a suburban commercial and suburban industrial zoning

district; however, the applicant has chosen to not meet this requirement, and from staff's perspective the interaction between the two adjoining uses would not likely warrant the need for a buffer. Tom Radenz, applicant representative from REI, noted the buffer area is also a utility easement containing sewer and water lines.

Jay Wittman asked if there was a signage plan or proposed monument sign. Radenz and Volz noted there was not at this time because of the unknown tenants. Kunst noted future signage approvals could be handled as if it were a conventional zoning district. He indicated 160 square feet of signage would typically be allowed for this parcel in a suburban industrial zoning district. Steele asked the applicant if they would be allocating the total signage to the tenants and if they felt the 160 square feet was adequate. Volz stated she would be the individual responsible for allocating the signage and did not believe the signage area would be a problem.

Steele asked if the access to Red Tail Lane has been addressed. Radenz indicated a draft easement agreement is being completed by the applicant's attorney and feels both parties are in agreement though nothing has been formally signed. Kunst stated the Plan Commission should consider the signed easement agreement as a condition of any approval.

Laura McGucken asked for clarification on the building's exterior finish materials to help address neighbor's aesthetic concerns from the GDP approval meeting. Kunst indicated the façade is all metal with a mix of vertical and horizontal panels. Mary Volz also noted the addition of landscaping around the foundation of the building will make the site more attractive.

Chairman Hebbe opened the hearing to public comment at 6:47 pm.

Alex Gordon, 1001 Cloverland Rd, noted he likes the appearance of the building and the proposed sitework.

Hebbe closed the public comment period at 6:49 pm.

Steele asked if there were any conditions that should be attached to a recommendation. Kunst recommended conditions on the approval of signage and a timeframe for receipt of the signed easement agreement.

**Motion by Jay Wittman, second by Laura McGucken to recommend approval of the Precise Implementation Plan for a new distribution and retail building at the property addressed 908 Cloverland Lane; conditioned upon receiving a signed easement agreement for access to Red Tail Lane prior to issuance of a building permit and staff approval of signage in conformance with the current sign ordinances and a maximum of 160 square feet of signage.**

**Motion Carried 5-0**

Jay Wittman excused himself from the Plan Commission to represent the applicant in the following agenda item.

- b. *Wausau Youth Baseball, applicant, requests conditional use approval to install sponsorship banners within the baseball diamond at Doepke Park, 2200 South Mountain Road. Parcel #34.152807.012.003.00.00. Docket #2018-06.*

Kunst indicated Wausau Youth Baseball would like to install sponsorship banners on the outfield fence at the primary baseball diamond at Doepke Park. He noted the Park Commission approved other aspects of the proposed ball diamond improvements, but the Plan Commission needs to review the signage aspect as it classifies as a unique sign within the Sign Ordinance.

Jay Wittman, applicant representative, noted the submission to the Park Commission indicated 6'x10' signs, however, based on the fence panel size, the signs will be closer to 4'x8'. Wittman indicated the signs would be green with three lines of white text to indicate the sponsors name and either a phone number or web address. He noted Little League has guidelines related to the content of any signs, for example "bar" cannot be displayed. It was also noted the longest duration the banners would be displayed is from April 15<sup>th</sup> to August 15<sup>th</sup> each year.

Commissioner Steele asked if these banners are an income source and who is responsible for putting them up and taking them down. Wittman noted they are sponsorship recognition banners intended to show appreciation for the financial contributions made to the organization and it's not intended to be an advertising mechanism. He also stated Wausau Youth Baseball is responsible for both installation and take down of the signs each year.

Harlan Hebbe, opened and closed the Public Comment period at 7:04 pm with no public comment received.

Commissioners noted they like the uniformity of the sign color, size and text; and were happy the organization is responsible for installation and maintenance of the sign.

**Motion by Jim Hampton, second by Tom Steele to recommend approval of the conditional use request to install sponsorship banners within the baseball diamond at Doepke Park, 2200 South Mountain Road, as presented with 4'x8' banner size and three lines of text.**

**Motion Carried 4-0**

Jay Wittman rejoined the Plan Commission as an acting member.

NEW BUSINESS:

- a. *Discussion and recommendation on possible creation of a short-term rental ordinance. Docket #2018-07.*

Kunst noted staff seeks direction as to whether short-term rentals like Airbnb and VRBO are an appropriate use in the Town of Rib Mountain, and if so, how to begin regulating them. For reference, he provided the Village of Ashwaubenon's short-term rental ordinance. Kunst noted the Town of Rib Mountain does not directly define this type of land use within the Zoning Ordinance; and therefore, effectively prohibits it. Renting of space intended for overnight housing is regulated through zoning as either 'Commercial Indoor Lodging' (i.e. hotels/motels) or 'Bed and Breakfasts.'

The general consensus of Plan Commissioners was the transient nature of the use in established residential neighborhoods was not something they would like to see. They cited concerns of additional neighborhood traffic and the possibility of nuisance/party houses. They were curious how often current Airbnb properties get rented and noted some consideration may be given to more rural locations with limited visibility and interaction with other residents.

CORRESPONDENCE / QUESTIONS / TOWN BOARD UPDATE:

Countywide Addressing – Kunst noted the Town received the County's reply brief and will likely meet in closed session to discuss their response.

Town Board Approvals – Kunst indicated the Town Board approved all items as recommended from the previous Plan Commission meeting, and that Denyon Homes is willing to provide an extra 10' of right-of-way along Robin Lane related to the previous approvals.

2700 Fern Lane – Kunst noted the conditional use modification request for the accessory building at 2700 Fern Lane will be reconsidered at the March 6<sup>th</sup> Town Board meeting.

PUBLIC COMMENT: None Received

ADJOURN:

**Motion by Tom Steele, second by Jim Hampton to adjourn the Plan Commission Meeting.**

**Motion carried 5-0. Meeting adjourned at 7:22 pm.**

Respectfully Submitted,

Paul Kufahl, Building Inspector / Assistant Zoning Administrator

**REPORT TO PLANNING COMMISSION**

**FROM:** Steve Kunst, Community Development Director  
**DATE:** March 8, 2018  
**SUBJECT:** Conditional Use Request – Low Density Husbandry

**REQUEST:** Conditional Use to allow for the keeping of bees and chickens (Low Density Husbandry)

**PROPERTY OWNER:** Benjamin & Nicole Fisher

**PROPERTY ADDRESS(S):** 5601 Blackberry Drive  
**PARCEL #(S):** 34.202807.010.006.00.00

**CURRENT ZONING:** Estate Residential - 1 (ER-1)  
**ADJACENT ZONING:** ER-1 (North, South, East, & West)

**FUTURE LAND USE:** Residential

**NARRATIVE:**

The applicant seeks Plan Commission approval for a low-density husbandry use to allow the keeping of bees and chickens. The subject property is zoned Estate Residential-1, allowing for conditional use review. The landowners wish to begin with one (1) hive, with the ability to expand in the future. The request is to allow for a total of one hive per 2,500 square feet of lot area, or 82 total hives. Further, the applicant requests approval to keep up to eight (8) chickens. Below are the standards for low density husbandry found within the Zoning Ordinance.

**RMMC Section 17.056(2)(b-1) – Low Density Husbandry**

Husbandry land uses include all operations primarily oriented to the on-site raising and/or use of animals at an intensity of less than one animal unit (as defined in Section 17.024) per acre, and less than 500 animal units total. Apiaries are considered husbandry land uses.

1. Permitted by Right: RA-1-35ac.
2. Special Use Regulations: Not applicable.
3. Conditional Use Regulations {CR-5ac, ER-1}:
  - a. Any building constructed for this agricultural use, including structures housing animals, shall be located in relation to any residentially zoned property and all other lot lines so as to minimize any negative impacts on the abutting property. The distance that these buildings shall be set back from property lines and adjacent structures shall be determined by the Plan Commission on a case-by-case basis. **The proposed location (former pool area) is set back from the rear property line by approximately 119 feet; whereas, both side property lines are over 200 feet away.**
  - b. All outdoor animal containments (pasture) shall be located a minimum of 10 feet from any residentially zoned property. **The current proposal indicates chickens to be located near the hive locations; however, the applicant did not disclose locations of any future fencing.**
4. Parking Regulation: One space per employee on the largest work shift. **Not applicable as the proposal does not call for any employees.**

**ADDITIONAL CONSIDERATIONS:**

- Plan Commission should identify the total number of hives permitted, if any
- Any chickens should be limited to hens (i.e. no roosters).
- Identify size, material, and location of any enclosures and or fences.
- What are the plans for the honey if the proposed maximum capacity is reached?
  - This concern primarily deals with any future plans to sell product onsite.

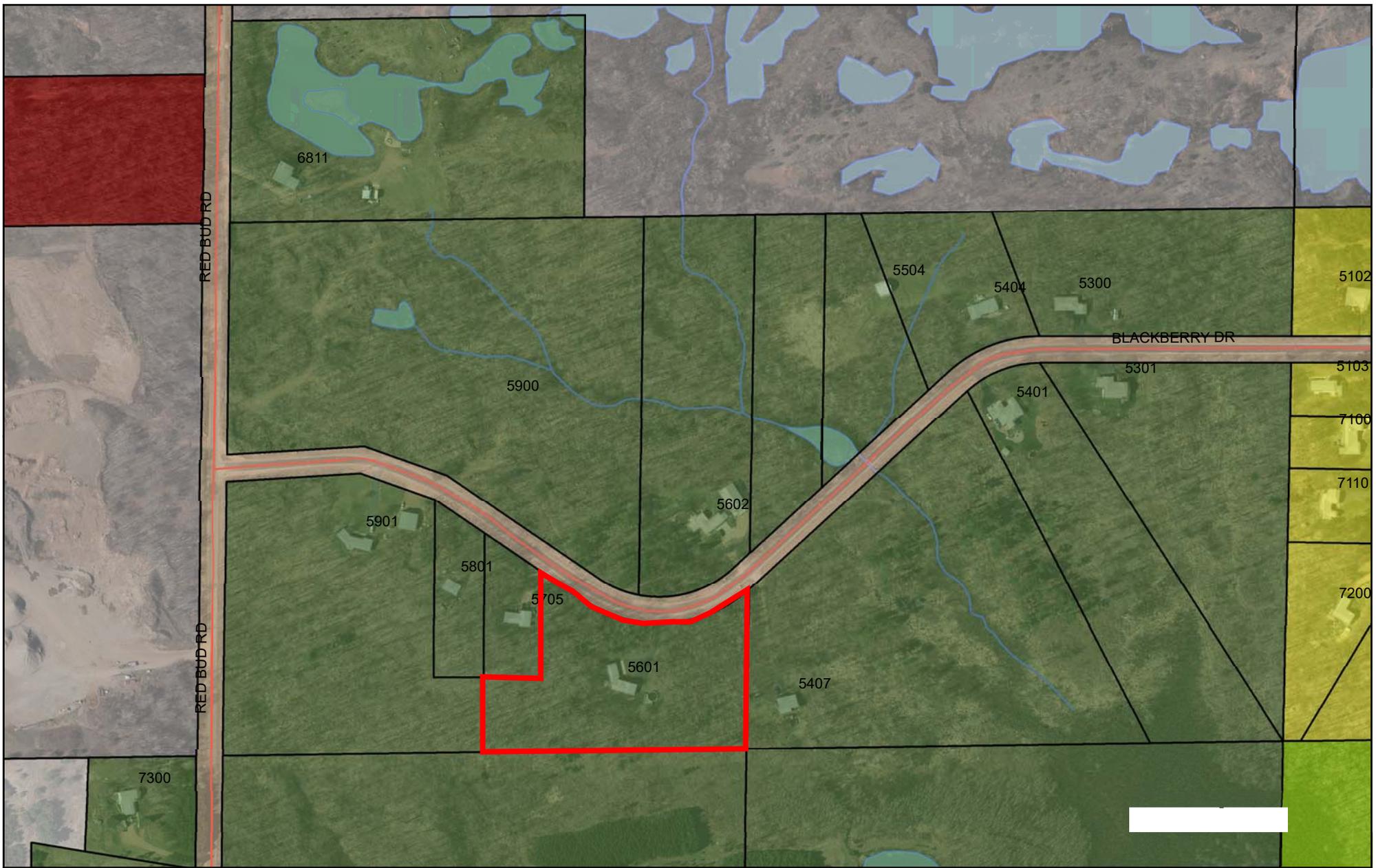
## FINDINGS OF FACT

Below are the six questions representing the Plan Commission's finding of fact to be forwarded to the Town Board as found within the Rib Mountain Code of Ordinances, along with initial staff interpretation.

1. How is the proposed conditional use (the use in general) in harmony with the purposes, goals, objectives, policies and standards of the Town of Rib Mountain Comprehensive Plan, this Chapter, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice by the Town?  
**The Town's Comprehensive Plan does not specifically identify issues, goals, or objectives related to agricultural activities outside of the overall goals for Marathon County. The County hopes to preserve working agriculture through cooperative efforts with municipalities.**
2. How is the proposed conditional use (in its specific location) in harmony with the purposes, goals, objectives, policies and standards of the Town of Rib Mountain Comprehensive Plan, this Chapter, and any other plan, program, or ordinance adopted, or under consideration pursuant to official notice by the Town?  
**The Future Land Use Map identifies this area for residential development. This designation is used in the Town's 2005 Comprehensive Plan Future Land Use Map to identify all types of residential development. With that said, the subject property is located in an area of low density, large lot development.**
3. Is it likely that the proposed conditional use, in its proposed location and as depicted on the required site plan (see (3)(d), above), will have an adverse impact on the use of adjacent property, the neighborhood, the physical environment, pedestrian or vehicular traffic, parking, public improvements, public property or rights-of-way or other matters affecting the public health, safety, or general welfare, either as they now exist or as they may in the future be developed as a result of the implementation of the regulations or recommendations of this Chapter, the Comprehensive Master Plan, or any other plan, program, map, or ordinance adopted or under consideration pursuant to official notice by the Town or other governmental agency having jurisdiction to guide growth and development?  
**The proposed use should be buffered from both the street and neighboring properties with existing vegetation. Further, the proposed location of hives and chickens is set back more than 100 feet from any adjacent property. The subject property is also located in an area with large lot, single-family development.**
4. Does the proposed conditional use maintain the desired consistency of land uses, land use intensities, and land use impacts as related to the environs of the subject property?  
**Existing conditions include large lot, single-family development and woodlands. The proposal does not increase residential densities, and as proposed the use is well buffered from adjacent properties.**
5. Is the proposed conditional use located in an area that will be adequately served by, and will not impose an undue burden on, any of the improvements, facilities, utilities or services provided by public agencies serving the subject property?  
**The subject property is accessed via Town road and does not appear to place any undue burden on public facilities. However, if the operation expands to its proposed maximum capacity a potential exists for more commercialized activity and potentially more traffic.**
6. Do the potential public benefits of the proposed conditional use outweigh any and all potential adverse impacts of the proposed conditional use (as identified in Subsections 1. through 5., above), after taking into consideration any proposal by the Applicant and any requirements recommended by the Applicant to ameliorate such impacts?  
**Pubic benefit of the proposal is limited to the overall effort addressing the decline in honey bees. As noted above, the proposed use appears buffered enough from neighboring properties that adverse impacts should be minimal to none.**

**POSSIBLE ACTION:**

1. Recommend approval of the conditional use for a low-density husbandry use to allow keeping of bees and chickens at the property addressed 5601 Blackberry Drive, as presented
2. Recommend approval of the conditional use for a low-density husbandry use to allow keeping of bees and chickens at the property addressed 5601 Blackberry Drive, with conditions/modifications.
3. Recommend denial of the conditional use for a low-density husbandry use to allow keeping of bees and chickens at the property addressed 5601 Blackberry Drive.



4a-4

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Prepared by: **mi-TECH**  
www.mi-tech.us

Map Printed: 3/8/2018

<ul style="list-style-type: none"> <li>□ Parcel Outline</li> <li>□ Parcel Address</li> <li><b>Zoning Districts</b></li> <li>□ Unzoned</li> <li>□ CR-5ac Countryside Residential</li> <li>□ EO Estate Office Residential</li> <li>□ ER-1 Estate Residential</li> <li>□ MR-4 Mixed Residential</li> <li>□ NC Neighborhood Commercial</li> <li>□ OR Outdoor Recreation</li> <li>□ RA-1 Rural Agricultural</li> <li>□ RA-2 Rural Agricultural</li> <li>□ ROW</li> <li>□ RR Rural Residential</li> <li>□ SC Suburban Commercial</li> <li>□ SI Suburban Industrial</li> <li>□ SO Suburban Office Residential</li> <li>□ SR-2 Suburban Residential</li> <li>□ SR-3 Suburban Residential</li> <li>□ UC Urban Commercial</li> <li>□ UDD Unified Development</li> <li>□ UR-8 Urban Residential</li> <li>□ Building Outline</li> <li>— Road Centerline</li> <li>□ Water Feature</li> </ul>	<p>0 215 430 Feet</p> <p>N</p> <p>DISCLAIMER: The information and depictions contained herein are for informational purposes only; Mi-Tech specifically disclaims accuracy in this reproduction and advises that if specific and precise accuracy is required that certified maps, surveys, plats, or other official means be obtained. There is no Statement of Accuracy for any parcel data; the parcel layer is considered an Index Parcel Layer not a Cadastral Parcel Layer. For planning purposes only.</p>
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There has been a long history of beekeeping in Wisconsin and Marathon County that dates back to the early 1800's. The Wisconsin Honey Producers Association was established as early as 1864. While much has changed since then, honey production has remained a strong part of our economy. Wisconsin honey production ranked eighth in 2010 and today ranks twelfth nationally. Bees are an important pollinator for apples, cranberries, strawberries, blueberries and many other fruits, vegetables, and wild flowers. The problem today is there are far fewer honey bees than in the past, which impacts our food source, making it hard to increase food production. Due to the decline of the bee population there is a profound need to keep bees in order to sustain and increase our food crop. In fact each year, California routinely ships in millions upon millions of honey bees to pollenate their almond crops and increase almond production.

Many worry about having stinging insects nearby their homes, but honey bees are not aggressive like wasps or yellow jackets. They will not follow or sting you if you get too close. There are many beekeepers that wear very little to no protection when they are inspecting their hives because the honey bee is bred to be gentle. There are colonies that can become aggressive, but then all you need to do is re-queen. Honey bees forage over a two mile radius and unless someone was really paying attention they wouldn't notice a difference in the number of bees around them after someone added an apiary.

There are a few townships in the area that have ordinances written pertaining to beekeeping. Some have no restrictions on the number of hives you can have, while others are on a square foot of land basis and the strictest being in the city of Wausau were you are allowed two hives. Other large cities such as, Milwaukee and Madison also allow you to keep bees.

I only plan on having one hive this year in the pool area shown on the map. The pool is no longer there. If I really enjoy keeping bees I may expand the number of hives. One of the nearby townships has a 1 hive per 2500 sq. ft. limit and this would be what I suggest being the limit for my property. As I have explained before there are a great number of resources available because of the long history of beekeeping in the state and locally with the Central Wisconsin – Marathon County Beekeepers' Association.

We would also like to have chickens in the future. We would ask for a limit of eight. They would be placed near the beehives.

BLACKBERRY DR

106.55'

249.39'

BLACKBERRY DR

443.63'

RIS MOUNTAIN

10.6

LOT 4

CSM 21-9



652.20'

4a-6

**REPORT TO PLAN COMMISSION**

**FROM:** Steve Kunst, Community Development Director  
**DATE:** March 8, 2018  
**SUBJECT:** Pre-Application Conference

**APPLICANT:** Paul Hackel / Riverside Land Surveying, agent  
**PROPERTY OWNER:** Scott and Lori Geurink

**PROPERTY ADDRESS(S):** 6200 South Mountain Road

**REQUEST:** Pre-Application conference regarding a potential rezoning and minor subdivision development

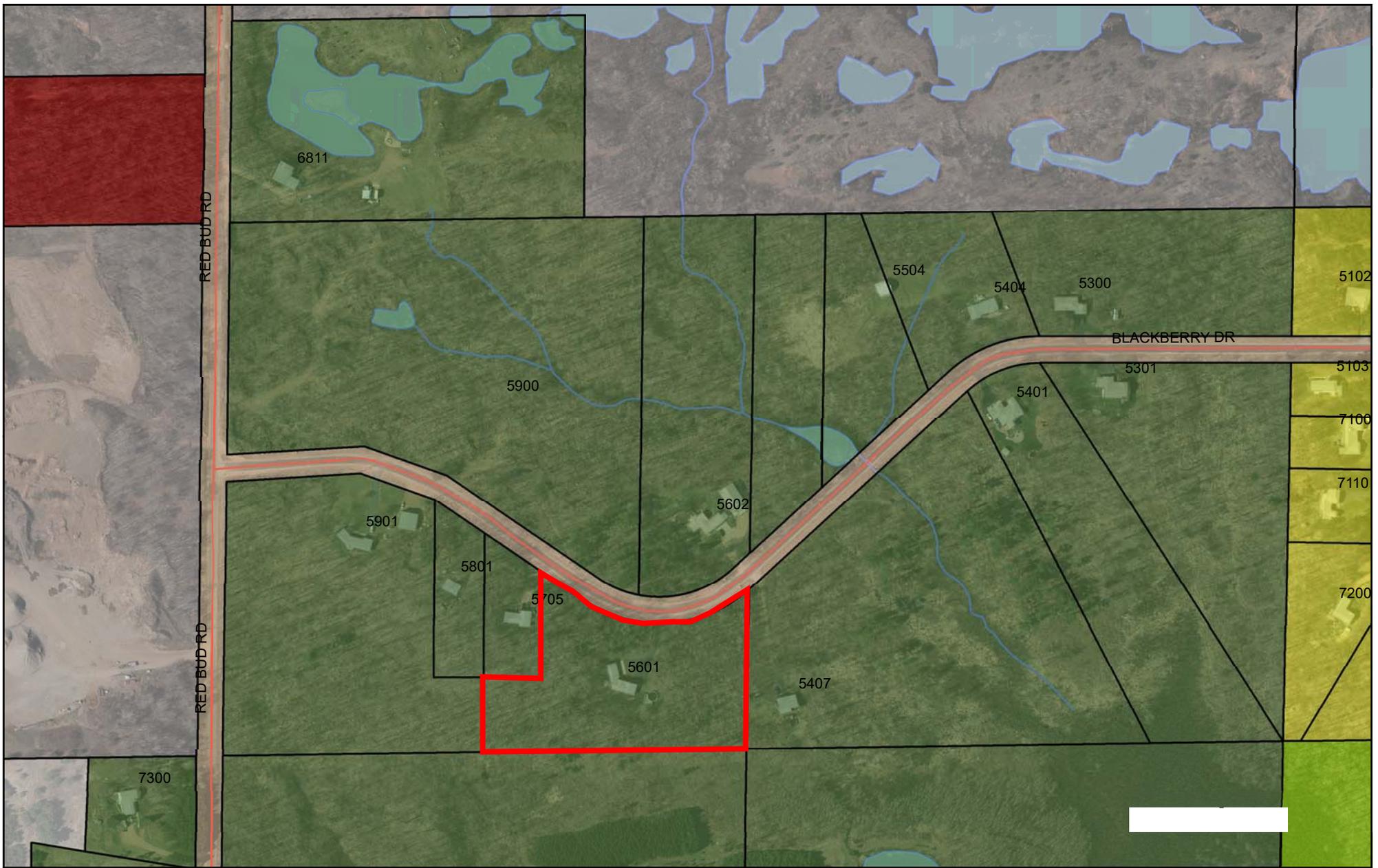
**CURRENT ZONING:** Rural Residential (RR)  
**ADJACENT ZONING:** RR (North & West), ER-1 (East), RA-1 (South)  
**PROPOSED ZONING:** To be Determined (Likely ER-1)

**FUTURE LAND USE DESIGNATION:** Forest and Cropland

**NARRATIVE:**

The applicant seeks Plan Commission feedback on the concept of rezoning approximately 29 acres on the north side of South Mountain Road, between Red Bud and Thornapple Roads (see attached). The rezoning is intended to facilitate a minor (or county) subdivision. The proposal calls for a seven (7) lot plat; including the existing residence, six (6) new single family lots ranging from approximately 2-5.4 acres, and two stormwater outlots. The location of the proposed road intersection with South Mountain Road is based on correspondence from the Marathon County Highway Department. As proposed, the land needs to be rezoned, subdivided via County Plat, and an exemption granted from the Town and County maximum cul-de-sac length provisions.

**POSSIBLE ACTION:** No action to be taken. Item is for discussion purposes only.



4a-4

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Prepared by: **mi-TECH**  
www.mi-tech.us

Map Printed: 3/8/2018

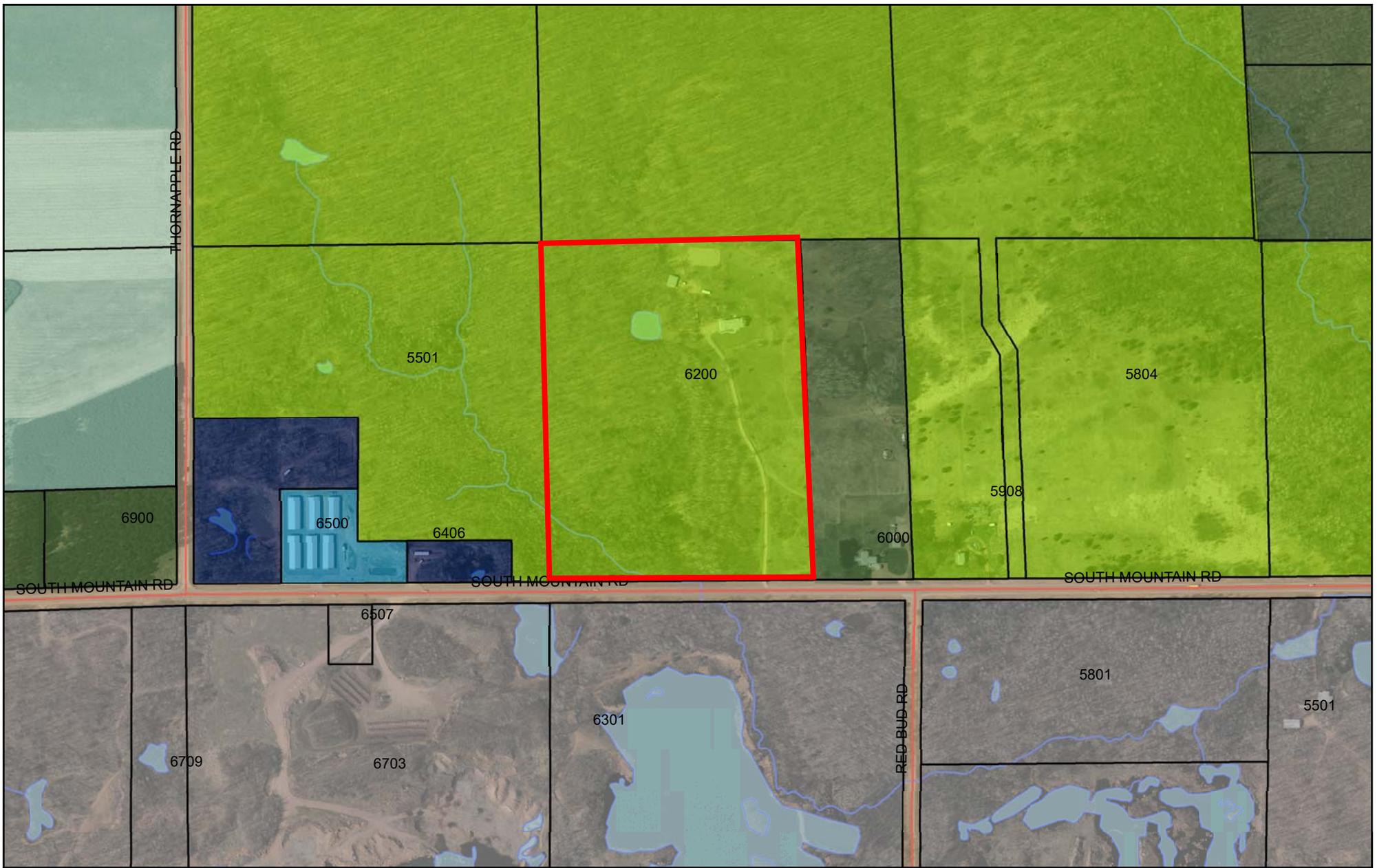
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Feet

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5a-2

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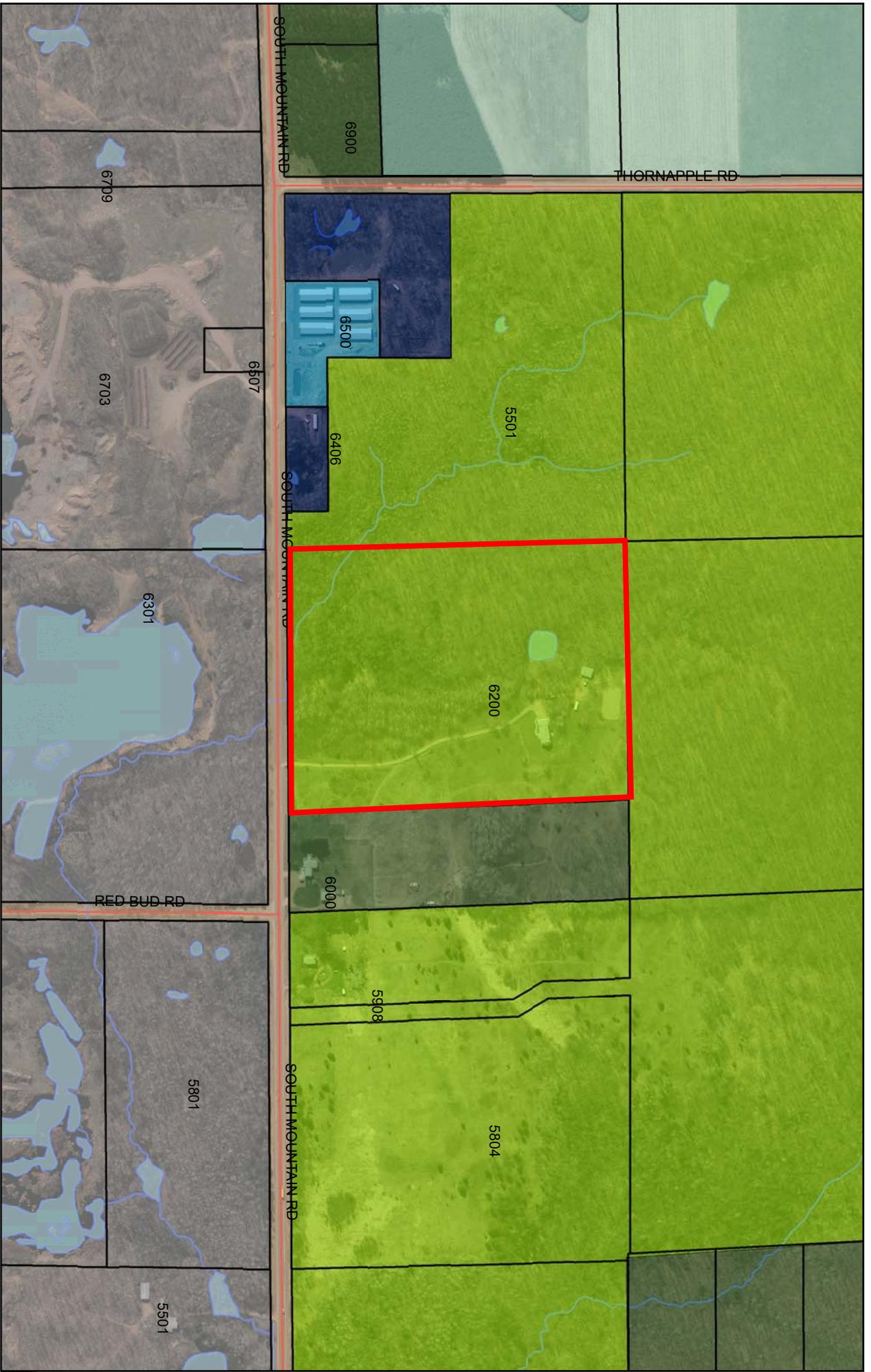
Map Printed: 1/17/2018

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Prepared by:



Map Printed: 1/17/2018

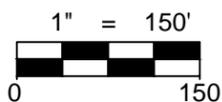
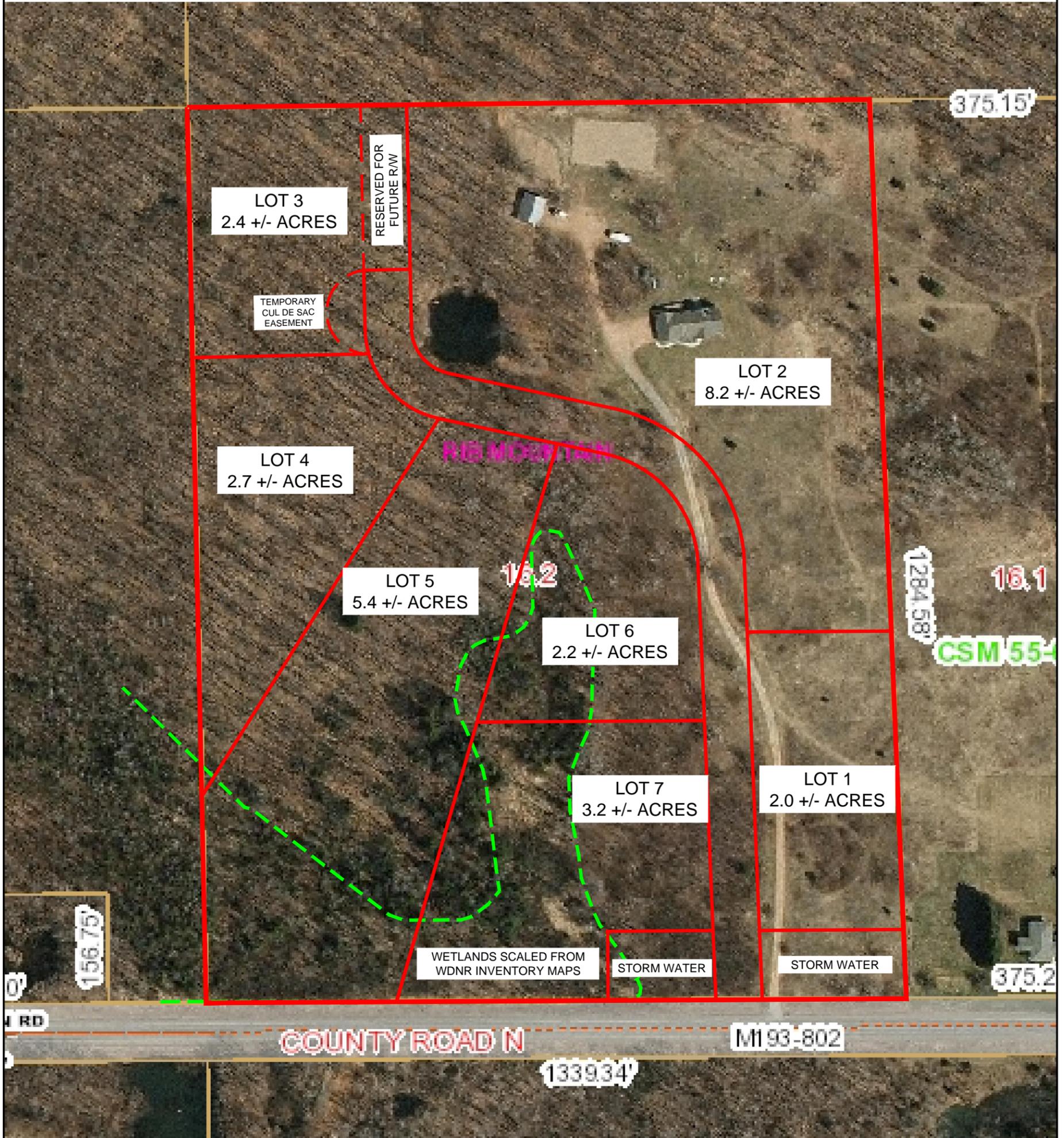
- Parcel Outline
- Parcel Address
- Zoning Districts**
- Unzoned
- EO Estate Office
- ER-1 Estate Residential
- MR-4 Mixed Residential
- NC Neighborhood Commercial
- OR Outdoor Recreation
- RA-1 Rural Agricultural
- RA-2 Rural Agricultural
- RR Rural Residential
- SC Suburban Commercial
- SI Suburban Industrial
- SO Suburban Office
- SR-2 Suburban Residential
- SR-3 Suburban Residential
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# CONCEPTUAL COUNTY PLAT

Part of the Southeast 1/4 of the Southeast 1/4 of Section 18, Township 28 North, Range 7 East, Town of Rib Mountain, Marathon County, Wisconsin



SHEET  
**1 OF 1**

PROPOSED LOT LAYOUT FOR PAUL HACKEL  
SECTION 18, T28N, R7E,  
TN. OF RIB MOUNTAIN, MARATHON COUNTY

REVISION  
SURVEYED BY: N.J.W.  
DRAWN BY: M.F.L.  
CHECKED BY: N.J.W.  
APPROVED BY:  
DATE: MARCH 9, 2018



6304 KELLY PLACE WESTON, WI 54476  
PH 715-241-7500 - FAX 715-355-6894  
email - mail@riversidelandsurveying.com

PROJECT No.  
**2794**

**REPORT TO PLAN COMMISSION & TOWN BOARD**

**FROM:** Steve Kunst, Community Development Director  
**DATE:** March 8, 2018  
**SUBJECT:** Update on Short-Term Rental Ordinance Discussion

**NARRATIVE:**

The Plan Commission initially discussed the concept of implementing an ordinance specific to short-term rentals at its February 14<sup>th</sup> meeting. The general direction of the Commission was to recommend leaving the Town’s current ordinances in place. This recommendation was shared with the Town Board on February 20<sup>th</sup>; however, the Board has since directed the Plan Commission to draft an ordinance regulating short-term rentals. Further, recent State legislative changes altered the way municipalities are able to regulate this use. Wisconsin Act 59 (2017) prohibits local governments from enacting ordinances prohibiting the rental of a residential dwelling for seven (7) consecutive days or longer. Attached is a brief case law update from the Wisconsin Chapter of the American Planning Association with additional information.

**POSSIBLE ACTION:** No formal action to be taken. Item is for discussion only.



## February Case Law Update February 28, 2018

### A summary of Wisconsin court opinions decided during the month of February related to planning

For previous Case Law Updates, please go to: [www.wisconsinplanners.org/learn/law-and-legislation](http://www.wisconsinplanners.org/learn/law-and-legislation)

### ***Wisconsin Supreme Court Opinions***

[No planning-related cases to report.]

### ***Wisconsin Court of Appeals Opinions***

#### **Short-term Rental Was a Legal Nonconforming Use**

[County of Walworth v. Hehir](#) involved the issue of whether the use of a home for short-term rentals was a legal nonconforming use. Hehir purchased a single-family residence in 2009 and spent six or seven months rehabbing the property. In 2013 he began renting the property for short-term stays (less than 30 days). In December 2014 Walworth County adopted an amendment to the County Zoning Ordinances intended to address issues related to short-term rentals. In August 2016 Walworth County cited Hehir for illegally operating a “lodge” in a residentially zoned district as a result of the 2014 amendment to the County’s zoning ordinances. Hehir challenged the citation arguing that the use of the property for short-term rentals was protected as a legal non-conforming use.

Under Wisconsin law, a structure used for a use allowed at the time a zoning ordinance is adopted or amended may continue even though it does not conform to the provisions of the new ordinance. A property owner bears the burden to prove by a preponderance of the evidence that the nonconforming use was an active and actual use that existed prior to the commencement of the new ordinance and has continued to the present. If the use is merely casual and occasional or incidental to the principal use, it does not acquire nonconforming use status.

The circuit court determined that Hehir met the burden of establishing that the use of the property for short-term rentals was a lawful nonconforming use. He expended time and money rehabbing the property and the property was not his primary residence although he occasionally stayed there with his family. In 2013 Hehir licensed the property as a tourist rooming house with the State of Wisconsin Department of Agriculture, Trade and Consumer

Protection and renewed his license every year. Hehir testified that he continuously rented the property since July 2013 for periods of time from a weekend to two weeks. While Hehir did not have complete documentation of the rentals, he testified that the biggest gap between rentals was two months.

The Court of Appeals agreed that the evidence supported the circuit court's determination that Hehir's use of property for short-term rentals was an existing, nonconforming use at the time the County adopted the ordinance amendment.

The case is not recommended for publication in the official reports.<sup>1</sup>

Reminder: [2017 Wisconsin Act 59](#) added the following regarding short-term rentals:

Creates Wis. Stats sec. 66.0414 prohibiting local governments from enacting an ordinance prohibiting the rental of a residential dwelling for 7 consecutive days or longer. A local government may limit the total number of days within any consecutive 365 day period that a dwelling may be rented to no fewer than 180 days, if a residential dwelling is rented for periods of more than six but fewer than 29 consecutive days. A local government cannot specify the period of time during which the residential dwelling may be rented, but it may require that the maximum number of allowable rental days within a 365-day period must run consecutively. Act 59 requires persons who rent their residential dwelling to notify the local clerk in writing when the first rental within a 365 day period begins.

Act 59 also requires any person who maintains, manages, or operates a short-term rental for more than 10 nights each year, to: (a) obtain from the Department of Agriculture, Trade and Consumer Protection a license as a tourist rooming house, as defined in s. 97.01(15k), and (b) obtain from a municipality a license for conducting such activities, if the local government has enacted an ordinance requiring such a person to obtain a license. Act 59 specifies that if a local government has in effect an ordinance that is inconsistent with this provision, the ordinance would not apply and could not be enforced.

Finally, Act 59 adds language to the room tax law, Wis. Stats. Sec. 66.0615, making it clear that a municipality may impose the tax on lodging marketplaces (e.g., Airbnb) and owners of short-term rentals. A lodging marketplace must register with the Department of Revenue (DOR) for a license to collect taxes imposed by the state related to a short-term rental and to collect room taxes imposed by a local government. Once licensed, if a short-term rental is rented through the lodging marketplace, the lodging marketplace must: (a) collect sales and use taxes from the occupant and forward such amounts to DOR; (b) if the rental property is located in a local government that imposes a room tax, collect the room tax from the occupant and forward it to the municipality; and (c) notify the owner of the rental property that the lodging marketplace has collected and forwarded the sales and room taxes described in (a) and (b). A local government would not be allowed to impose and collect a room tax from the owner of a short-term rental if the local government collects the room tax on the residential dwelling from a lodging marketplace.

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<sup>1</sup> What is an "unpublished" opinion? Under Wisconsin law, an unpublished opinion may not be cited in any Wisconsin state court as precedent or authority. However, an unpublished opinion issued on or after July 1, 2009, may be cited for its persuasive value with certain exceptions. Because an unpublished opinion cited for its persuasive value is not precedent, it is not binding on any court of this state. A court need not distinguish or otherwise discuss an unpublished opinion and a party has no duty to research or cite it.

## **Unconstitutional Provisions Are Severable From Remainder of Ordinance**

[Green Valley Investments, Inc. v. County of Winnebago](#) involved the latest in a series of court challenges to Winnebago County’s regulation of adult entertainment establishments in the County zoning ordinance. In 2006 Green Valley opened an adult cabaret offering nude entertainment in violation of the County zoning ordinance. In 2015 the U.S. Court of Appeals for the Seventh Circuit found that the conditional use permitting process for adult entertainment establishments violated free speech protections under the First Amendment to the U.S. Constitution. The County argued that other provisions in the zoning ordinance pertaining to the sale of alcohol and setback requirements from other uses were severable and that the remaining ordinance was enforceable. The Seventh Circuit Court of Appeals held that severability was not a federal question so the state courts should answer it. This state court case was brought to answer the severability question.

The Wisconsin Court of Appeals noted that the County zoning ordinance included a severability clause. The Court noted that this clause is not controlling but is given great weight in determining whether valid provisions can stand separate from invalid provisions. The Court of Appeals concluded that the permitting process could be severed and the remaining provisions were a valid restraint on the local of adult entertainment establishments.

The case is not recommended for publication in the official reports.<sup>2</sup>

## ***U.S. Court of Appeals for the 7<sup>th</sup> Circuit Opinions***

[No planning-related cases to report.]

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