

November 12, 2021

Department of Planning and Development  
Eau Claire County Courthouse  
721 Oxford Avenue, Room 3344  
Eau Claire, WI 54703

Sent via email

[Jared.Grande@co.eau-claire.wi.us](mailto:Jared.Grande@co.eau-claire.wi.us)

[Richard.Eaton@co.eau-claire.wi.us](mailto:Richard.Eaton@co.eau-claire.wi.us)

Re: Administrative Appeal Application  
CUP0049-21

Dear Jared Grande, Land Use Manager and Richard Eaton, Assistant Corporation Counsel:

As part of the Administrative Appeal in the above-referenced matter, environmental concerns were listed related to wetlands on the site. We are supplementing that information with the following regarding water pollution and potential wetlands. This information is simply meant to provide additional details regarding the issues we have previously raised. We believe this substantial evidence was lacking to satisfy applicable County standards related to environmental matters when the Committee improperly approved the CUP. The Committee's decision can and should be reversed on the environmental factors alone.

Kindly distribute this letter and the attachment to the Board prior to Monday's hearing as it will help the Board understand some of the arguments they will hear.

Sincerely,

**JARCHOW LAW, LLC**



Adam M. Jarchow

Attachment

## Shoreland Zoning—Proximity to Navigable Waterway

Based on the Eau Claire County Planning & Development Staff Recommendation, the Committee appears to have failed to review and assess information regarding the waterway on the property and as a result the Committee improperly failed to consider Eau Claire County's Shoreland Protection Overlay District standards in Title 20.

Because of those failures, the Committee's decision was not based on substantial evidence, much less any information, regarding the presence of a waterway at the site. By failing to recognize and properly classify the waterway on the property, the Committee lacked substantial evidence in its CUP approval and did not base its CUP approval on compliance with all of the required County Ordinance standards in Title 20 or applicable standards in Title 18 for this property.

As a result, the Committee:

- Did not proceed on a correct theory of law;
- Acted in an arbitrary or unreasonable manner; and
- Did not base its decision on substantial evidence, such that it might reasonably issue the CUP.

Information and Ordinance standards supporting the argument that the Committee erred includes the following:

- Eau Claire County's Shoreland Protection Overlay District applies to those unincorporated areas of Eau Claire County which are "within three hundred (300) feet of the ordinary high water mark of navigable rivers or streams. . . . Rivers and streams in Eau Claire County shall be presumed to be navigable if they are designated as perennial waterways or intermittent waterways on the United State Geological Survey quadrangle maps (1:24,000)." (Section 20.02.001(B) (emphasis added).
- The attached WDNR Surface Water Viewer maps clearly show a waterway traversing directly adjacent to the proposed sawmill site. The maps show a waterway at the "24K" level, that the stream is classified as intermittent, and is also shown to be a cool-cold headwater.
- The attached site photos taken on September 27, 2021 from South Shaleridge Road facing east towards the property show a waterway that meanders and has water coursing through that meander.
- The Conditional Use Permit Application and the Eau Claire County Planning Staff Recommendation failed to mention or note the intermittent stream and failed to identify the Property was in the Shoreland Overlay District. The Committee referred to the area adjacent to the proposed sawmill as a "drainage ditch," but that did not properly classify the waterway as, at minimum, an "intermittent stream" which is subject to Title 20 of the County's Shoreland Protection Overlay District.

- The applicant failed to provide required information regarding the proper zoning classification and Committee also apparently failed to review information related to the application of the Shoreland Protection Overlay District and did not apply the standards of the Shoreland Protection Overlay District.
- The applicant and Staff Recommendation also failed to provide information regarding the Ordinary High-Water Mark of that stream.
- By failing to identify the stream and establish and consider an Ordinary High-Water Mark for this waterway, the following purpose and intent of and ordinance standards in the Shoreland Protection Overlay District were not properly reviewed and considered by the Committee:
  - Section 20.01.003 (intro): The purpose and intent “to promote and protect the public trust in navigable waters.”
  - Section 20.01.003(A): “Further[ing] the maintenance of safe and healthful conditions and prevent and control water pollution through . . . controlling filling and grading to prevent soil erosion problems” and “limiting impervious surfaces to control runoff which carries pollutants,” such as placement of a pollutant like a sawdust pile near the waterway.
  - Section 20.01.003(B): Protecting aquatic habitat by regulating pollution sources;
  - Section 20.01.003(C): Control building sites and structure placement by “setting minimum building setbacks from waterways.”
  - Section 20.01.003(D): Preservation of shoreland vegetation and natural scenic beauty by “preventing shoreline encroachment by structures,” “controlling shoreland excavation and other earth moving activities” and “regulating the use and placement of . . . other structures.”
  - Section 20.02.001(F)(2)(a)(iii): Whether the wetland setback standards in the shoreland zoning district were followed;
  - Section 20.06.001: Required building setbacks from the Ordinary High-Water Mark of any navigable water;
  - Section 20.08.001: Whether filling, grading, or excavating in the shoreland area will comply with Chapter 20.08 and NR 115, Wis. Admin Code; and
  - Chapter 20.09: Whether the impervious surface standards will be met.
- As a result of not receiving substantial evidence, from the applicant or Staff Report regarding the status of the waterway or its Ordinary High-Water Mark, the Committee could not approve the CUP pursuant to the County’s Shoreland Overlay standards in Chapter 20 because it did not properly review or assess such standards. The Committee’s decision can and should be reversed.
- As a result of not having substantial evidence, regarding the status of the waterway or its Ordinary High-Water Mark, the Committee could also not properly assess the following standards and purposes under Title 18:

- Section 18.32.040(G): In the Agricultural-Preservation District, considering the “effect of the proposed use on water . . . sedimentation, and other possible environmental damage,” especially with a sawdust pile in close proximity to the waterway;
  - Section 18.21.060(A): Whether the CUP is “in conformance with the purpose of the zoning district in which it is located,” which in Section 18.32.001(F) of the A-P District’s purpose, includes the need to “promote environmental quality;”
  - Section 18.01.010(B): The need “to protect and conserve the natural resources of the county, including . . . surface and groundwater, by conserving the most appropriate use of land;”
  - Section 18.01.010(A): The need “to promote the public health, safety, comfort, convenience and general welfare of the citizens of Eau Claire County;” and
  - Section 18.21.060(B): Whether the CUP “will not be injurious to the use and enjoyment of other property in the immediate vicinity for purposes already permitted.”
- Accordingly, the Committee erred and did not base its decision on a correct theory of law when it failed to consider the Title 20 Shoreland standards, acted in an arbitrary and unreasonable manner because the Committee lacked information and substantial evidence when it issued the CUP to ensure compliance with Title 20’s Shoreland Zoning standards and the above-referenced Title 18 standards, and did not base that decision on substantial evidence because it was missing such evidence from the applicant and did not consider key evidence regarding the waterway and how the use satisfied those Ordinance standards.

### Wetlands

As evident from the pictures taken of the site (see cited pictures from above) and the aerial views provided in the appeal application, there appear to be wet conditions and without the applicant conducting a wetland delineation, the Committee cannot ensure wetland impacts are minimized or any applicable wetland setbacks or standards are met at the site. Without considering the potential impacts to wetlands, the Committee erred by failing to properly determine whether the CUP meets the wetland setback standards in Section 17.06.085(A)(2).

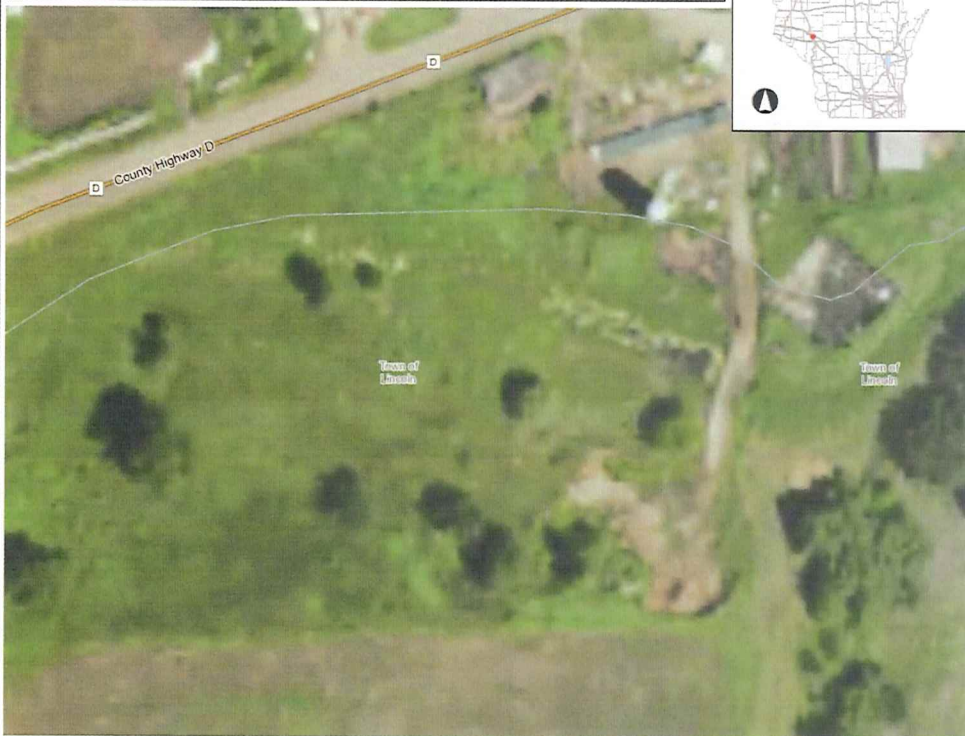
The Committee erred and a wetland delineation should be conducted to ensure disturbance, applicable setbacks, and other county and state standards are met.



**24K Hydrography Streams and Rivers - WDNR  
Surface Water Data Viewer**



**Legend**



0.0 0 0.02 0.0 Miles

NAD\_1983\_HARN\_Wisconsin\_TM

1: 990

DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public address. No warranty, expressed or implied, is made regarding accuracy, applicability for its particular use, completeness, or quality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/legal/>

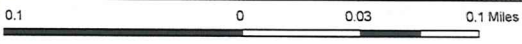
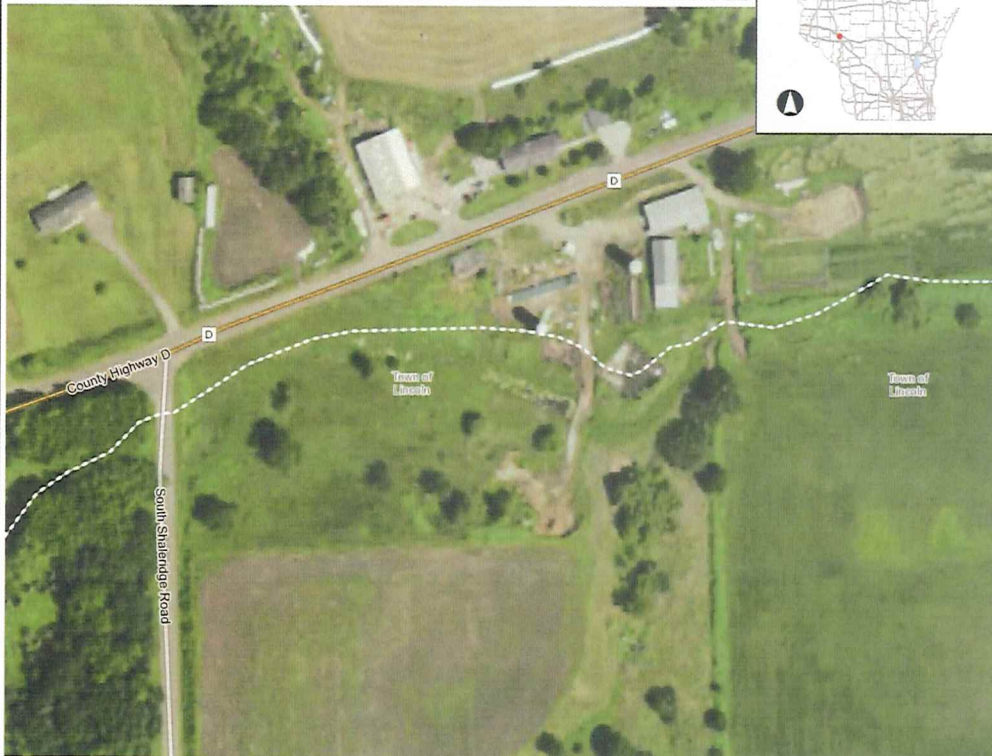
**Notes**



## Intermittent Stream - WDNR Surface Water Data Viewer



### Legend



NAD\_1983\_HARN\_Wisconsin\_TM

1: 1,980

DISCLAIMER: The information shown on these maps has been obtained from various sources, and are of varying age, reliability and resolution. These maps are not intended to be used for navigation, nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness, or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <http://dnr.wi.gov/legal/>

### Notes

