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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (September 2013)

Oneida County
Planning & Zoning Department
Courthouse Building
PO Box 400
Rhinelander WI 54501-0400
Telephone 715/369-6130
FAX 715/369-6268
Email: zoning@co.oneida.wi.us

September 4, 2009

Senator Mark Miller, Chairman
Committee on Environment
State Capitol, Rm 409 South
PO Box 7882
Madison WI 53708

Dear Senator Miller:

Thank you for agreeing to hold a listening session in Three Lakes, Wisconsin on Clearinghouse Rule 05-058, relating to minimum standards for County Shoreland Zoning Ordinances.

Oneida County is blessed with over 1,000 lakes and miles of rivers and streams. In 2008, Oneida County issued 1,204 zoning permits for a total valuation of \$64,005,772. The Planning and Zoning Department staff consists of 14 positions, which four years ago, consisted of 19 positions.

NR 115, as written, will significantly increase the workload for the Oneida County Planning and Zoning Department. The number of permits will dramatically increase for Oneida County shoreland property owners. Permits will be required for construction, development, reconstruction, structural alterations or moving of buildings or structures regardless of the size or dollar amount if located within 1000 feet of a lake or 300 feet of a navigable stream.

The proposed impervious surface requirements will require additional review time for permits and additional staff onsite prior to the issuance of these permits. Furthermore, the County will be required to conduct periodic inspections of the work in progress to ensure compliance. Currently, Oneida County does not conduct onsite inspections for all zoning permit applications. The number of onsite inspections currently being conducted will more than double in order to administer the proposed language.

There will be a large cost to the County to amend existing ordinance language in order to comply with the proposed NR 115. The last comprehensive ordinance re-write in 2001 cost approximately \$163,000.

In addition, it will cost Oneida County approximately \$320,000 for implementation and administration of the proposed language. Currently Planning and Zoning Department's state-wide are attending budget hearings where they are being

directed to reduce budgets through elimination of services, reduction of costs and elimination of positions.

The NR 115 code revision will affect:

- resources, both water and land
- zoning departments and the codes they administer
- landowners within 1,000 feet of a lake or 300 feet of a navigable streams
- users of navigable waters
- County budgets to cover costs to amend ordinances
- contractors
- taxpayers
- future generations

Oneida County has reviewed the draft and is in opposition to certain code sections. The following is a list of the sections we are opposed to and recommended revisions needed prior to adoption of the draft by the Natural Resources board.

1. NR 115.05(1)(e)3. Opposed to requiring non-riparian lots within the 1,000 ft and 300 ft shoreland jurisdiction to meet impervious surface limits.

We recommend that only riparian lots be required to meet impervious surface limits.

2. NR 115.05 (1)(e)3. Opposed to the 15% impervious surface limit which creates numerous nonconforming structures/uses. Oneida County appreciates the adjustment from 10% to 15% in the draft, but since NR 115 sets minimum state standards, a 20% limit would create fewer nonconforming structures/uses.

We recommend a 20% impervious surface limit (with no mitigation) on riparian lots and 30% impervious surface limit with mitigation and flexibility for counties to be more restrictive.

3. NR 115.05(1)(e)3. Opposed to the provision in the nonconforming structures and uses section that states "all other provisions of the Shoreland ordinance shall be met" because it prevents the replacement and relocation of a nonconforming principle structure on a lot that exceeds the 30% impervious surface limit even if the building is relocated to a compliant setback location without a variance to the 30%. Additionally, NR 115(1)(g)6.g. is in direct conflict with Wis. Stats. §59.692(1s)(a) which allows reconstruction of structures that are damaged or destroyed by violent wind, vandalism, fire, flood, ice, snow, mold or infestation.

We recommend that NR 115.05(1)(g)6.g. be deleted.

As a result of the hearings before the Natural Resources Board, the Board's decision was to not require variances for structures over the

30% impervious surface limits if mold, wind, fire infestation applies and they will create language to that effect.

4. NR 115.05(2). Opposed to the provision in the establishment of the land division review section which requires county review of land divisions in shoreland areas which create three (3) or more parcels or building sites of five (5) acres each or less within a five (5) year period.

We recommend that Wis. Stats. §236.02(12) be followed which defines subdivision. Inconsistent definitions cause administrative problems.

5. NR 115.05(4). Opposed to the provisions within the adoption of administrative and enforcement section, that requires written notice within 10 days to be given to regional offices of the department when a "permit is issued under sub. (1)(b)" which is anytime counties issue a permit for a structure with a setback less than 75 feet. The section also requires "copies of all proposed land divisions submitted to the county for review under sub.(2)" and "the grant or denial of copies of any permit granted under sub. (1)(g).

We recommend that these three (3) sections be deleted. These are all administrative functions that are guided by codes. The department can obtain this information through annual audits/reports.

As a result of the hearings before the Natural Resources Board, the Board decided that administrative permits will not be required to be submitted within 10 days or at all, unless the department decides they provide some value to them and then may ask for copies or they can do an audit on an annual basis. DNR staff was directed to create language to reflect this change.

6. NR 115.05(1)(e). Opposed to the inclusion of the term "structural alteration" be subject to impervious surface limits.

We recommend that the term "structural alteration" be deleted. This term is vague and could apply to something as minor as replacing a window with a door which has no impact on the resource.

As a result of the hearings before the Natural Resources Board, the Board decided that structural alteration will be removed from the rule. Exact language to reflect his change to follow.

7. Previous drafts of the proposed NR 115 included language that would address a growing issue within Oneida County regarding where the ordinary high water mark (OHWM) is located on a lake or stream. The previous drafts included language that would address the location of the OHWM. §115.13 Shoreland Setbacks stated "If a wetland extends more than 40 feet between open water and the wetland/upland boundary, the County may establish a setback of 35 feet landward from the

wetland/upland boundary.” Oneida County believes this is very important in assisting the public in establishing setbacks on their property and also when calculating impervious surfaces.

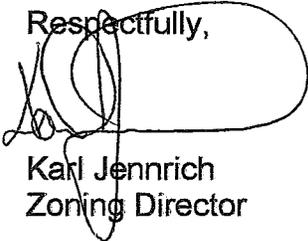
8. Oneida County, since 2001, has permitted the complete replacement and reconstruction of any principal building located less than 75 feet from the OHWM. The proposed language found in §115.05 (1)(e) & (g) would allow any structure located less than 35 feet from the OHWM to be maintained and repaired, but does not allow them to be reconstructed or replaced if located less than 35 feet from the OHWM. It should also be noted that both sections as it relates to accessory structures do not allow replacement or any alterations unless it is an existing driveway, walkway, patio or similar surface.

We recommend creating language that would allow principal structures less than 75 feet from the OHWM replacement/reconstruction and language that would treat all accessory structures equally.

Oneida County would like to thank the Department for addressing many of our previously submitted concerns related to the proposed changes to NR 115. Oneida County understands that there are many positive reasons for revising NR 115, mainly due to the fact that NR 115 is 40+ years old and the nonconforming language is out-of-date. The latest draft provides more flexibility based on mitigation and has eliminated many of the problematic language, definitions and sections that created much opposition throughout the state.

On behalf of Oneida County I would like to thank you for allowing me this opportunity to voice Oneida County's concerns as it related to the proposed changes to Chapter NR 115, Wisconsin Shoreland Protection Program.

Respectfully,



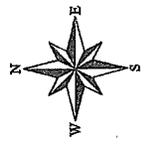
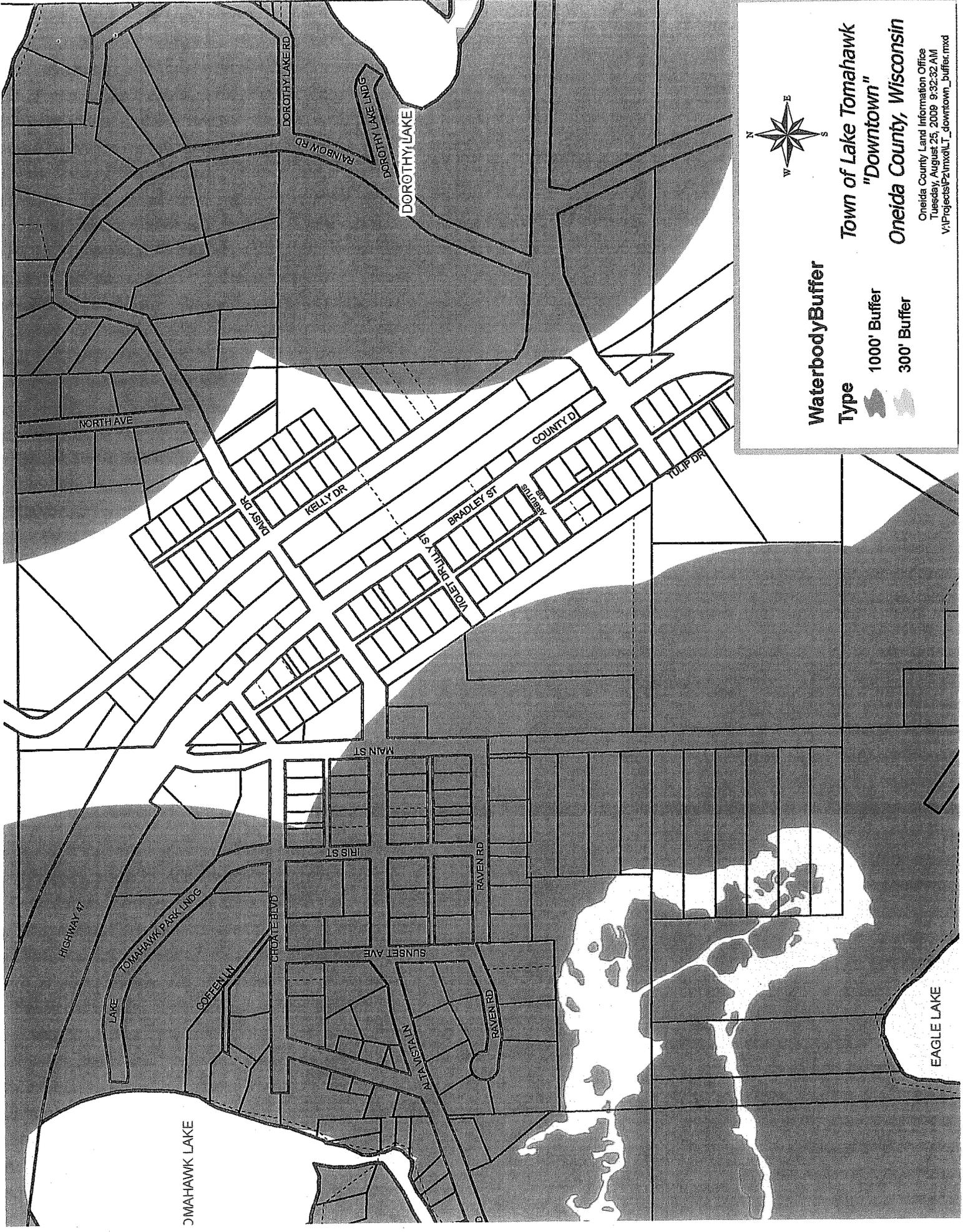
Karl Jennrich
Zoning Director

KJ/ljd

Enclosures

CC: VIA Email:

Senator Robert Jauch
Senator Robert Wirch
Senator Neal Kedzie
Senator Luther Olsen



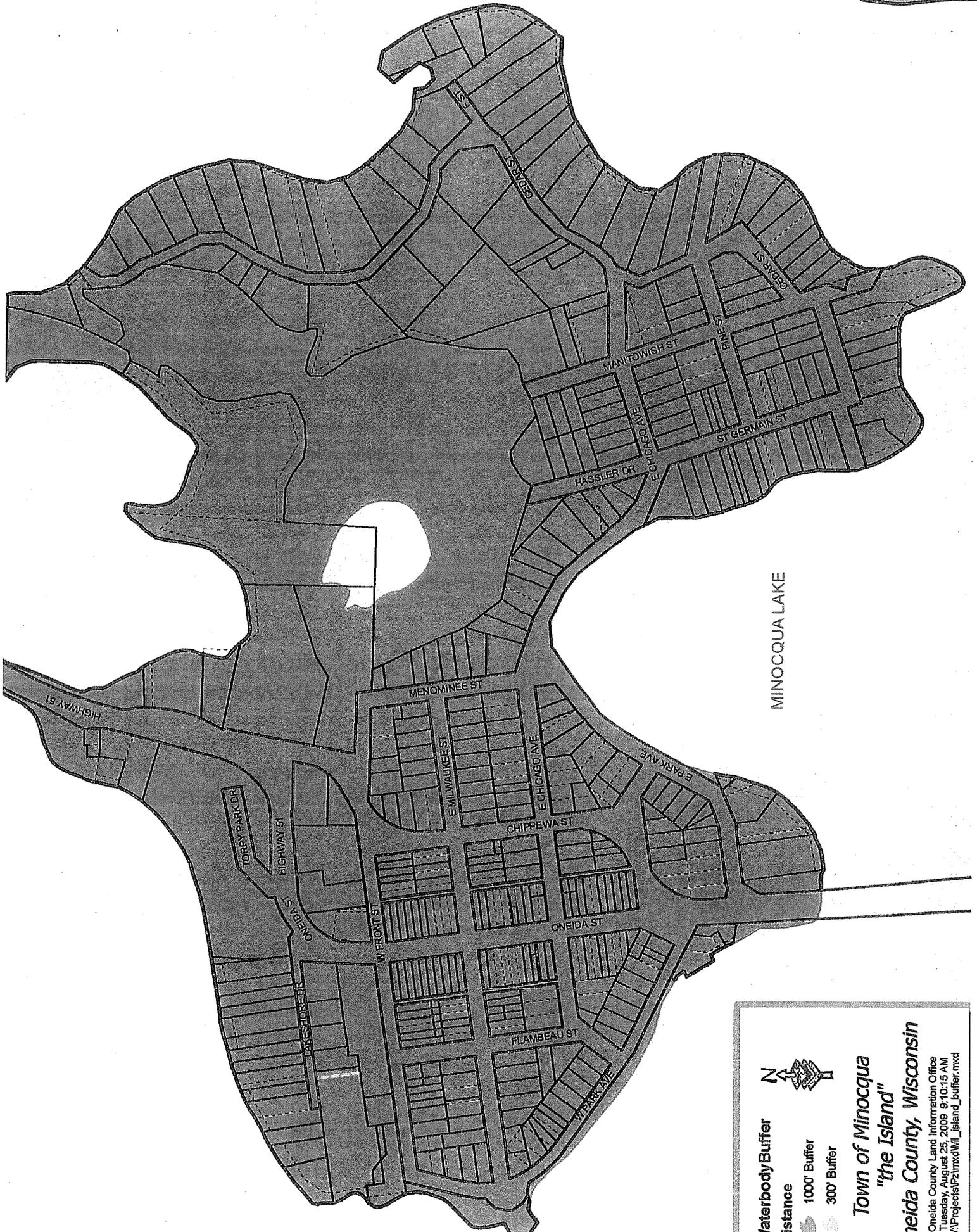
**Town of Lake Tomahawk
"Downtown"
Oneida County, Wisconsin**

Waterbody Buffer

Type

-  1000' Buffer
-  300' Buffer

Oneida County Land Information Office
Tuesday, August 25, 2008 9:32:32 AM
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Waterbody Buffer
 Distance
 1000' Buffer
 300' Buffer

Town of Minocqua
"the Island"
Oneida County, Wisconsin

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Waterbody Buffer
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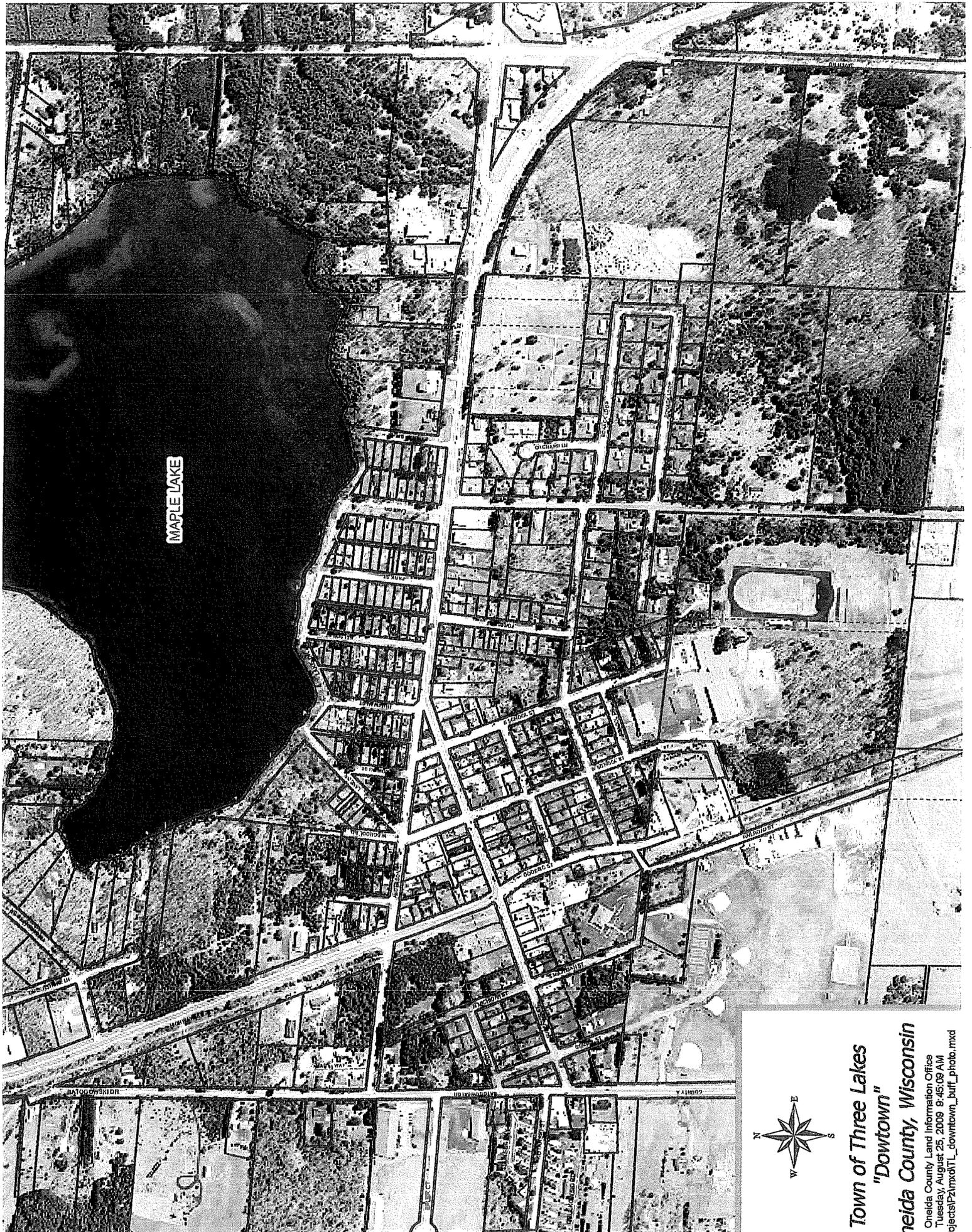
-  1000' Buffer
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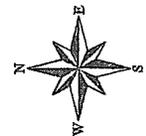
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**Town of Three Lakes
 "Downtown"**
 Oneida County, Wisconsin

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MAPLE LAKE



Town of Three Lakes
"Downtown"
Oneida County, Wisconsin

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KATHERINE LAKE

DOLLAR LAKE

ALICE LAKE

LOWER KAUBASHINE LAKE



Waterbody Buffer
Distance
1000' Buffer
300' Buffer

*Town of Hazelhurst
"Downtown"
Oneida County, Wisconsin*

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KATHERINE LAKE

DOLLAR LAKE

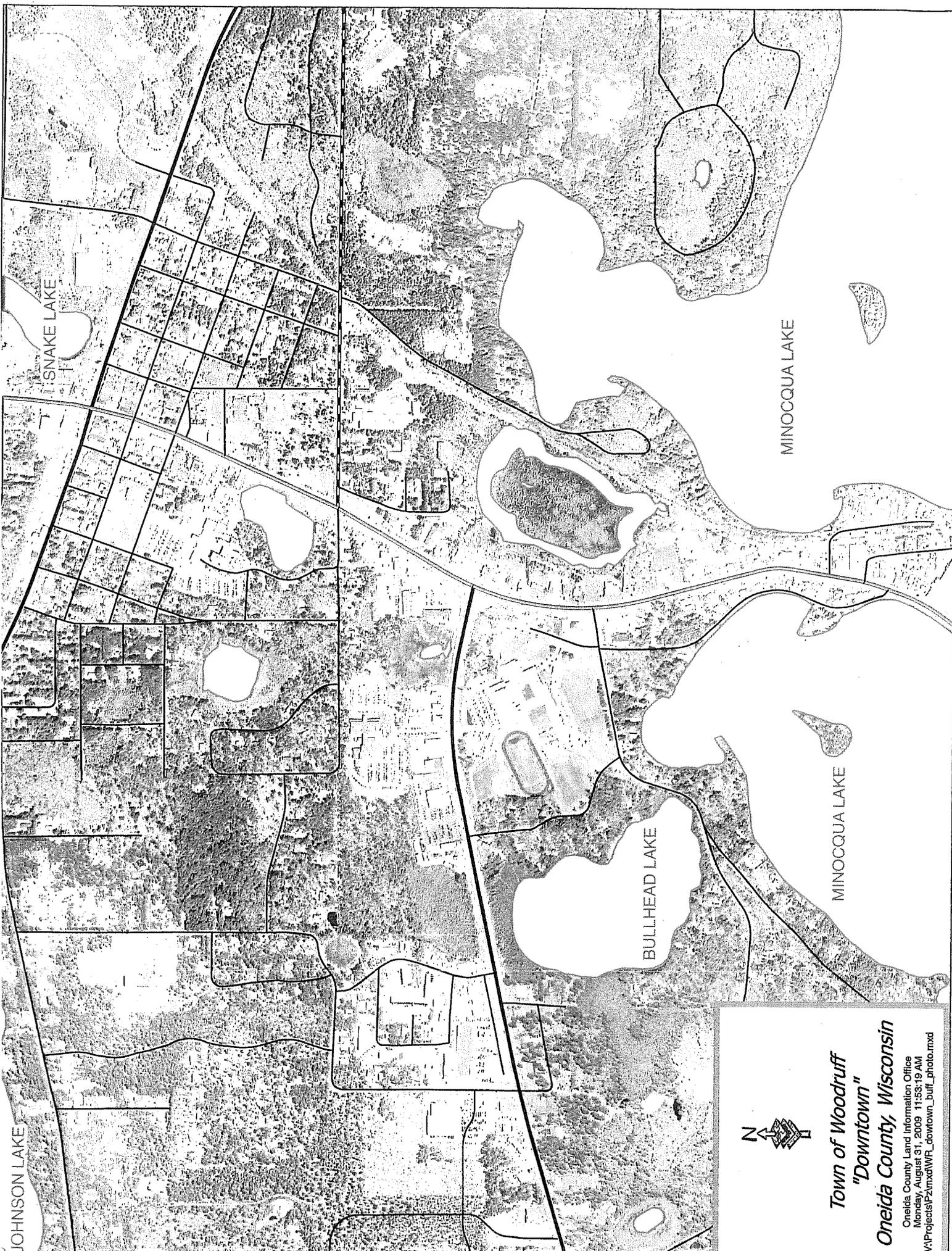
ALICE LAKE

LOWER KAUBASHINE LAKE



*Town of Hazelhurst
"Downtown"
Oneida County, Wisconsin*

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JOHNSON LAKE

SNAKE LAKE

BULLHEAD LAKE

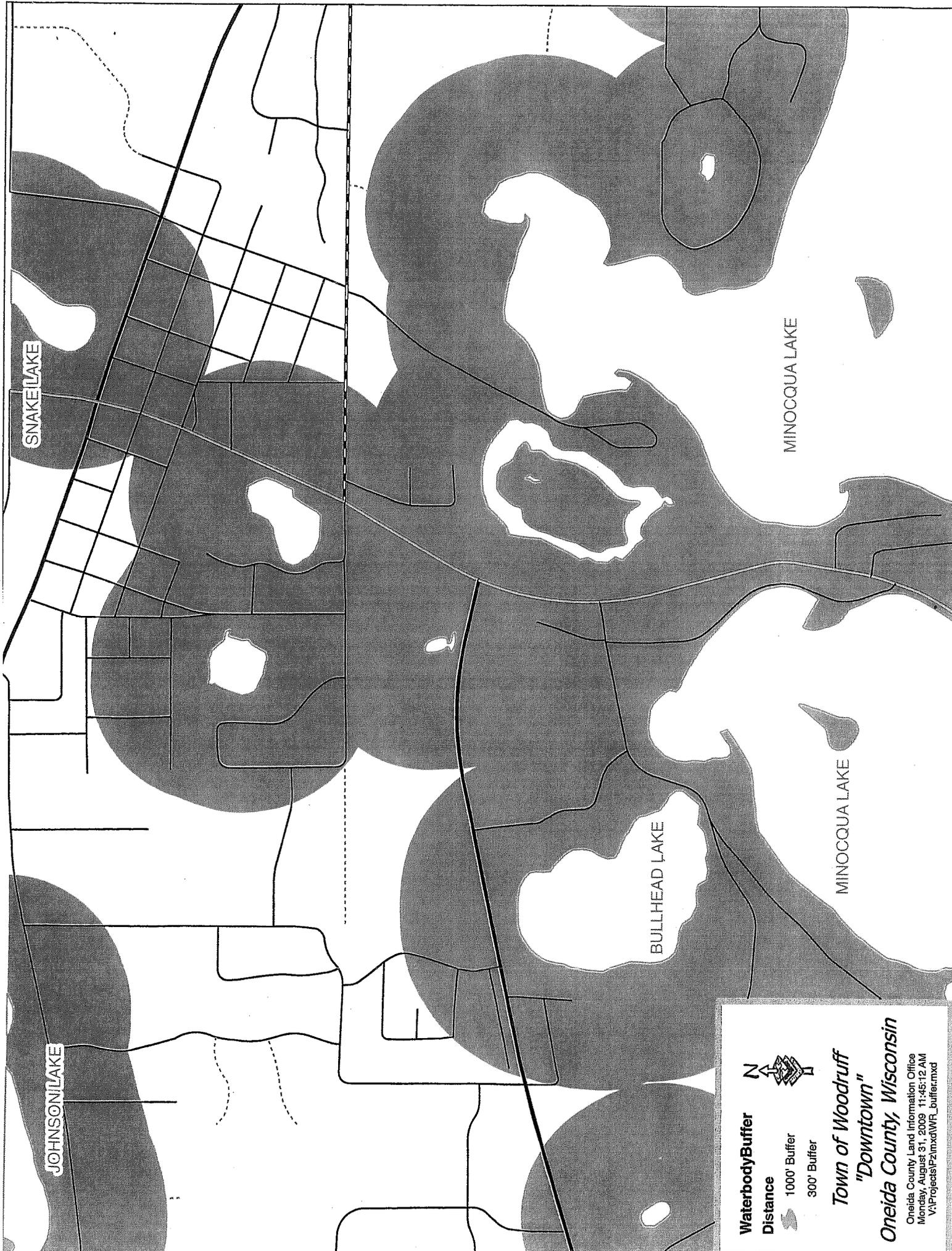
MINOCQUA LAKE

MINOCQUA LAKE



*Town of Woodruff
"Downtown"
Oneida County, Wisconsin*

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JOHNSON LAKE

JOHNSON LAKE

BULLHEAD LAKE

MINOCQUA LAKE

MINOCQUA LAKE



Waterbody Buffer

Distance

1000' Buffer

300' Buffer

*Town of Woodruff
"Downtown"
Oneida County, Wisconsin*

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THREE
LAKES

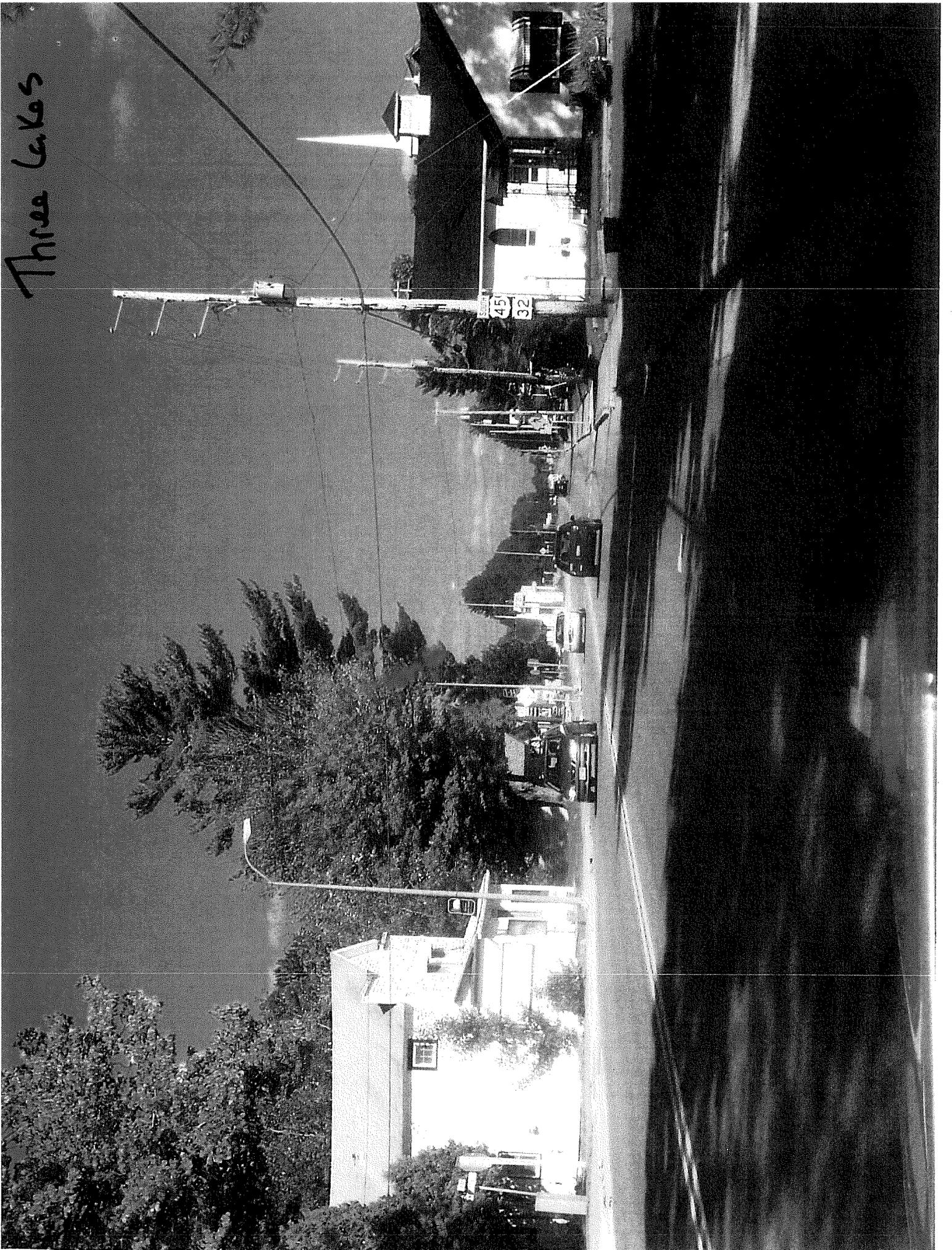


CENTER FOR THE A

THREE LAKES

STARS & STRIPES

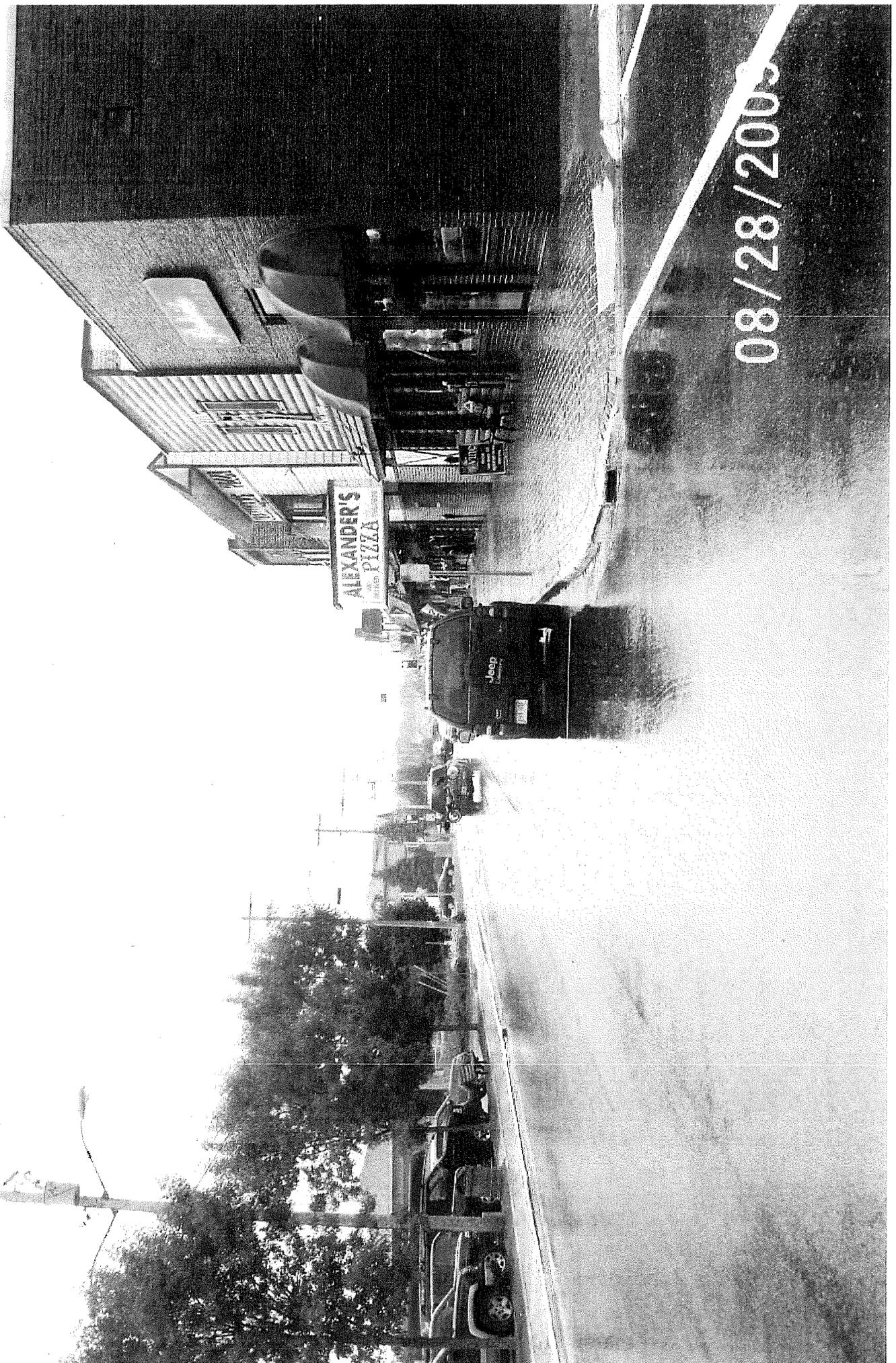
Three Lakes



Three Cakes

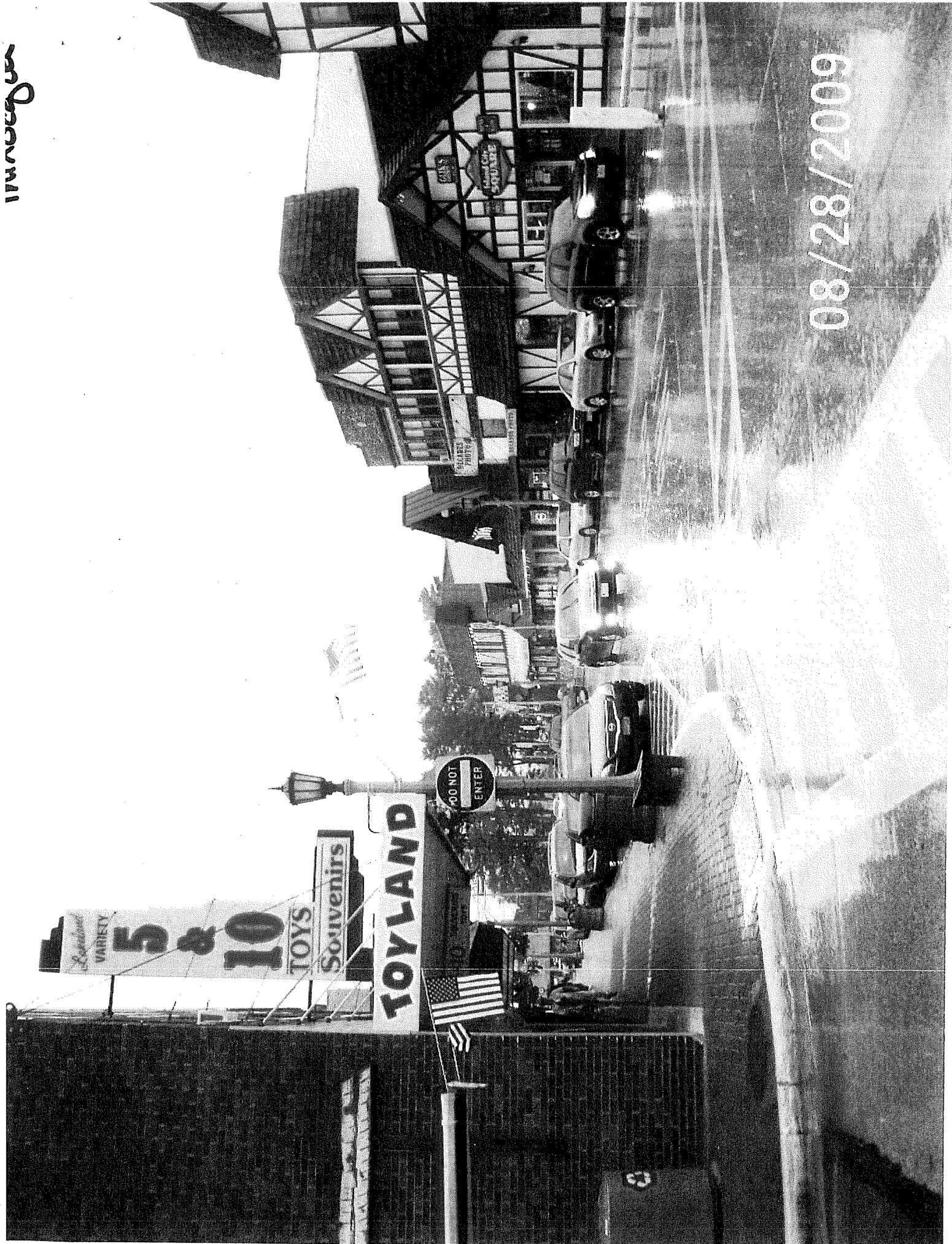


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08/28/2009

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08/28/2009

Toyland
 Toys & Souvenirs
 Toyland

DO NOT
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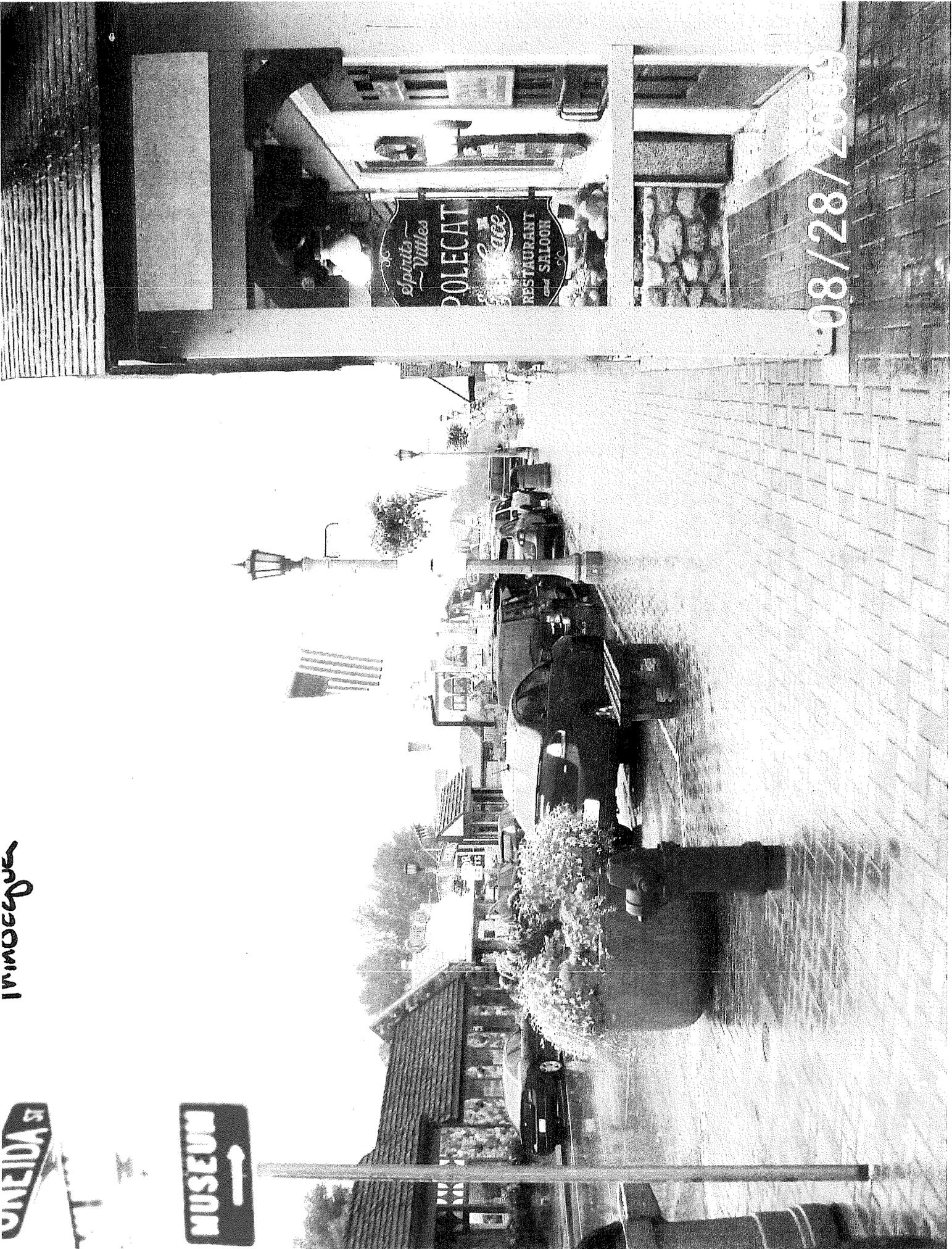


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WOLFE

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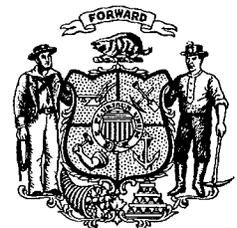


08/28/2009

Minocqua

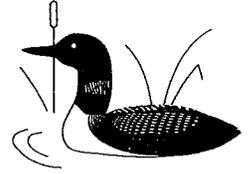


08/28/2009



VILAS COUNTY LAKES ASSOCIATION

P.O. Box 494
Eagle River, WI 54521-0494



TESTIMONY ON NR 115 PRESENTED SEPTEMBER 3, 2009 THREE LAKES, WI

My name is Charles Thier, and my address is 7672 Eagle Lane, St. Germain, WI 54558. I am President of the Vilas County Lakes Association and I am here to present testimony in support of the current version of NR 115 with some thought on a slight revision of the 1,000' rule. I present my testimony based on and related to testimony I gave at a NR 115 hearing conducted on July 25, 2007 at which I presented a position statement of VCLA and which is presented as an attachment.

The reason I currently support the present version of NR115 is that a vast majority of the positions VCLA supported in 2007 are included in the current version of NR 115.

VCLA supports maintaining the 75' setback rule, the 20,000 square foot minimum lot size and the 100' minimum lot width. VCLA also supports requiring a 35' buffer and the recommended limit on impervious surfaces. VCLA supports mitigation requirements to preserve habitat and water quality while allowing property owners of legal non conforming structures the flexibility of maintaining and improving their properties, etc.

However, we would recommend future consideration of and adjustment to the 1,000 foot rule with regard to lakeside business communities.

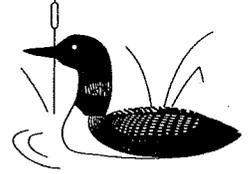
VCLA recognizes the current version of NR 115 represents many compromises and as a result we support it, based on our testimony of July 25, 2007

Respectfully,

Charles J. Thier, President
Vilas County Lakes Association

VILAS COUNTY LAKES ASSOCIATION

P.O. Box 494
Eagle River, WI 54521-0494



VCLA POSITION – TESTIMONY ON NR 115 REVISIONS PRESENTED JULY 25, 2007 – RHINELANDER PUBLIC HEARING

The Board of Directors of the Vilas County Lakes Association {VCLA} has reviewed the proposed revisions to NR 115 as written and has also reviewed the position of the Wisconsin Association of Lakes {WAL} with regard to those revisions. VCLA generally supports the proposed amendments as does WAL. VCLA considers the following provisions of the draft rule to be particularly important.

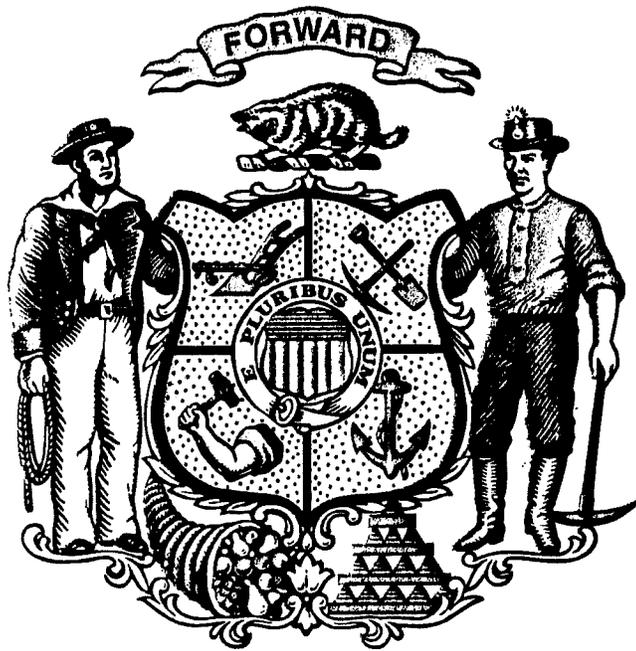
VCLA supports maintaining the 75' setback rule, the 20,000 square foot minimum lot area and the 100' minimum lot width. Certainly VCLA recognizes that there are lake classifications in the north woods that should be treated with stricter requirements.

VCLA also supports the new provisions of requiring a 35' buffer to protect habitat, a 35' vertical height limit for shoreland structures, a 20% limit on lot coverage with impervious surfaces and the requiring of counties to regulate land disturbing activities to protect water quality. This last rule is especially important in the north where there is a naturally high phosphorous content in the soil.

VCLA also supports mitigation requirements to preserve habitat and water quality and unlimited maintenance of legal non conforming structures. This rule would allow property owners of non conforming structures flexibility in maintaining and improving their properties.

VCLA supports WAL's position regarding the need to make adjustment to the following rules related to substandard lots and non conforming structures and the regulation of land disturbing activities. VCLA supports a position to allow unlimited expenditures to maintain, repair and improve legal nonconforming structures, but prohibit their expansion within the 75' setback. VCLA also supports grandfathering pre-existing substandard shoreland lots from the established minimum requirements, but treat contiguous substandard lots as one. VCLA also supports requiring counties to regulate land disturbing activities to limit runoff that can wash nutrients and sediments into lakes by establishing minimum area, slope, or other standards for land disturbing activities that require county permits, and to establish a standard for determining compliance.

Respectfully submitted,
Charles J. Thier, President
Vilas County Lakes Association



**Testimony regarding NR115 to the Wisconsin Senate Environment Committee
Three Lakes informational hearing - September 3, 2009**

Kris Adams Wendt
3955 Velvet Lake Road, Rhinelander, WI 54501

Senator Miller's accommodation in scheduling an informational hearing in Three Lakes for Northwoods residents is much appreciated. While the necessity for legislative travel restrictions is understandable given current budget constraints, that policy nonetheless places residents of the northern half of the state at a greater geographical disadvantage than usual when it comes to participation and access.

My husband, Gene Wendt, and I have deep roots in Wisconsin's lake country, as well as a profound appreciation for the importance of shoreland protection as it relates to the Northwoods economy. Our home is located on Flannery Lake in the Oneida County Town of Newbold, where we are members of the Flannery/Velvet Lake Association. We own and operate Crown Point Classics, an antique automobile and wooden boat restoration business in Hazelhurst, WI. My father's family has owned property on North Twin Lake in Vilas County since 1898, where my great grandfather once operated three resorts. My late father-in-law, Dick Wendt, came up through the ranks of the Wisconsin Conversation Department and retired from the DNR as Woodruff Area Fish Manager.

We generally support the revision of shoreland protection rules as set out by NR115 with one major exception: **we believe that unincorporated downtowns that are within 1,000 feet of a lakeshore – like Minocqua and Three Lakes – should be treated no differently than incorporated municipalities.**

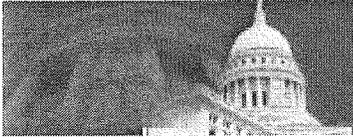
Although shoreland zones have been defined by state statute since the 1960s as areas 300 feet from a river floodplain or 1,000 feet from the ordinary high water mark of a lake, the proposed revision of NR115 will for the first time create a broader platform for enforcing the 1,000 foot lake shoreland zone through impervious surface requirements.

It makes no sense to us that developers can build right up to the water in cities like Oshkosh, Madison and Milwaukee, while small business owners located in rural lakeside downtown areas could potentially see their livelihoods placed at risk by new requirements under rules designed for residential shoreland properties.

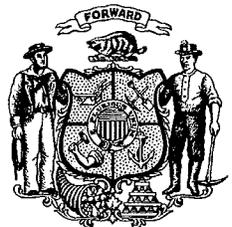
As a retired library director, I have been watching the progress of the Minocqua Public Library expansion plans with great interest and some concern within the context of NR115. The library occupies part of the Minocqua community building located approximately 175 feet from Lake Minocqua. While it appears that library officials will most likely be able to hold their referendum in November and proceed unheeded with their plans within the two year window created for county officials to bring local ordinances into line with NR115, disposition of this particular project spotlights the inequity created by the new rule.

Had the Minocqua Public Library trustees not already been far enough along in their planning to take advantage of that county compliance window of opportunity, the project would have been denied simply because it was located in Minocqua. That is patently unfair.

Either all downtowns located next to water should have similar restrictions or none of them should.



WISCONSIN STATE LEGISLATURE



Wisconsin Towns Association

Richard J. Stadelman, Executive Director
W7686 County Road MMM
Shawano, Wis. 54166

Tel. (715) 526-3157

Fax (715) 524-3917

Email: wtowns1@frontiernet.net

To: Senate Committee on Environment

From: Richard J. Stadelman, Executive Director

Re: Clearinghouse Rule 05-058 NR 115 Shoreland Protection Program

Date: September 4, 2009



On behalf of the member towns of Wisconsin Towns Association, we request that the Committee object to parts of the **Clearinghouse Rule 05-058, "NR 115 Shoreland Protection Program."** This memorandum will address a specific part of this rule as adopted by the Department of Natural Resources (DNR) board that we ask for the committee's objection. The memorandum further comments on the impact of this rule on the administration by counties.

The draft rule as adopted by the DNR board imposes a new performance standard of limiting impervious surfaces within 300 feet of a river and 1,000 feet of a lake in unincorporated areas (only the towns) of Wisconsin. The current NR 115 shoreland rules, while applying to this same distance from rivers and lakes in towns only required a 75 foot setback from the ordinary high water mark for structures. The impervious surface limitation established in the new rule under Sec. NR 115.05 (1)(e)3. will limit the impervious surface to no more than 15% of the shoreland lots [300 feet from a river and 1,000 feet from a lake ordinary high water mark (OHM)], unless a permit is issued by the county for up to 30% of the shoreland lot when a mitigation plan is approved by the county and implemented by the property owner. While this proposed rule offers more flexibility than early drafts proposed by the DNR in the past years, the impervious surface standard will impose an undue hardship on many property owners in towns in Wisconsin. Therefore, Wisconsin Towns Association requests that the Committee object to this portion of the Clearinghouse Rule 05-058 as indicated:

Object to Sec. 115.05 (1)(e)3., which imposes a maximum impervious surface area on a shoreland lot of not more than 15% or 30% impervious surface if a county issues a permit that requires a mitigation plan approved by the county and implemented by the property owner, because this portion of the rule will impose an undue hardship on property owners and towns across the state.

We ask that the committee find the proposed rule will impose an undue hardship for several reasons. First, the NR 115 Shoreland Protection Program only applies to land in unincorporated areas of the state (towns), unless the land was annexed after May 7, 1982 or incorporated after April 30, 1994. This requirement, which is a new performance standard with greater impact than current law, will impose an undue hardship on many property owners within 300 feet of a river and 1,000 feet of a lake that were previously only subject to a structural setback requirement.

While one of the major purposes of a shoreland protection program is to improve and protect water quality, the imposition of a new performance standard at 15% maximum (with 30% if a mitigation plan is approved and implemented) will affect a very significant number of property owners of existing businesses and residences (both permanent and seasonal). We would ask that the DNR apply a higher standard of 20% of the shoreland lot rather than 15%.

In the alternative we suggest to modify the rule to only apply the standard of 15% to shoreland lots within 150 feet or 200 feet of the ordinary high water mark (OHM). Beyond this distance there would be no impervious surface requirements. It should be pointed out that there are many residential and business developments throughout Wisconsin towns that were established long before the 1960's when the original shoreland zoning standards using a structural setback of 75 feet was imposed that are within the 300 feet of a river and 1,000 feet of a lake that will be arbitrarily impacted by the new impervious surface standard as written in this new rule. These old established developments with small back lots will now be subject to a performance standard that will be very difficult to meet. While state law (Sec. 59.692 (1s) of Wis. Statutes) and the rule allows rebuilding of existing structures on the same "building envelope" for nonconforming structures "*damaged or destroyed after October 14, 1997, when the damage was caused by violent wind, vandalism fire, flood, ice, snow, mold or infestation*", there will be many undeveloped lots in these areas up to 300 feet from a river and 1,000 feet from a lot that will be subject to the new standards. The proposed rule will limit redevelopment to existing building envelopes and will limit new development on old established developments with small back lots in towns in an arbitrary and unfair manner.

Another alternative to retaining the current 15% maximum with 30% under county permit with mitigation is to use a higher standard at a greater distance from the ordinary high water mark. For example, impose a 20% maximum with 40% level under county permit with mitigation beyond a distance of 150 feet or 200 feet from the ordinary high water mark. This higher suggested standard on the back lots will create less nonconforming structures and allow more flexibility for the very small back lots in old and established developments. This alternative still retains the higher performance standard on front lots bordering the water, while creating flexibility for very small back lots, that may be undeveloped now. To impose the 15% maximum to the full 300 feet from a river OHM and 1,000 feet from a lake OHM is a performance standard that will create undue hardship on property owners and towns. Using the performance standard of impervious surface limits within a distance of 150 feet to 200 feet from the OHM will improve water quality, while not imposing an undue hardship on others beyond that distance.

It should be pointed out to the Committee that because the NR 115 Shoreland Protection Program only applies to unincorporated lands (towns) in Wisconsin {unless was annexed after May 7, 1982 or incorporated after April 30, 1994}, there are many towns with both small and large established developments around the state that will be impacted by the new impervious standard when applied to the 300 feet from a river and 1,000 feet from a lake. Some of the more recognizable towns with these types of both residential and commercial developments are the towns of Minocqua, Woodruff, and Three Lakes in the north. However, there are many other towns across Wisconsin that have similar small unincorporated cross road communities that were developed before the 1960's which now will have substantial existing development that will be non-conforming uses and structures.

It would be unfair to ask established cities and villages to meet these new performance standards for established developments within the 300 foot and 1,000 foot distances. It is just as unfair to impose the new standards on towns with the same type of existing development. We

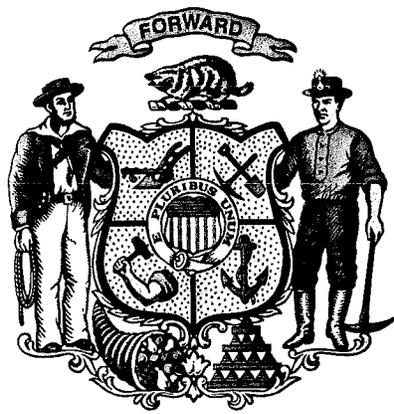
urge the committee and legislature as a whole to recognize the inequity of this distinction for towns versus cities and villages. Redevelopment and new development for off-water front property will be limited in towns that have these old and established areas. Limiting this type of development in these areas runs counter to another statewide initiative included in the state budget to preserve "working lands." If existing lots in these unincorporated areas within the 300 feet of a river and 1,000 feet of a lake can not be developed, new development will likely eat up more farm land and forested land away from the water. Using the nonconforming lots (albeit within 300 feet of a river and 1,000 feet of a lake) before building on productive agricultural land and forested land makes more sense for the economic good of the state and towns.

In addition to our request to object to the portion of the rule noted above, our association also wants to express similar concerns to the Wisconsin County Code Administrators (WCCA) specific to issues of implementation and administration of the revised NR 115 rule. One of the criticisms of the current rule was that it was applied differently in different counties by the code administrators. If this criticism is to be overcome with the new code, we support the WCCA request for adequate training for administrators, local officials, contractors, and the general public. The new performance standard based on maximum impervious surface areas or mitigation techniques is a concept that needs more public understanding and discussion. While some of the problems with the existing code (such as the 50% rule) will no longer exist for county code administrators to apply, the application of the impervious standard to the full 300 feet of a river and 1,000 feet of a lake will greatly increase the number of lots that will be subject to review and permitting, as opposed to sole application of the 75 foot structural setback requirement under the current rule. State funds should be appropriated for this type of education effort, or the effective date of the rule should be pushed back until such an effort can be funded by the state.

Town officials also recognize the costs that counties and thus county taxpayers will have to bear to update county shoreland zoning ordinances and properly train county staff to administer the new code. While not a new unfunded mandate, the new proposed rule will be an unfunded mandate upon counties at a time of cuts in shared revenue and levy limits. The question that needs to be asked is whether this new requirement that should be forced upon the counties in the next two years or can a longer implementation time be provided to reduce the immediate costs?

In conclusion, we request the committee to object to the portion of the rule in Sec. 115.05 (1)(e)3. that imposes the impervious surface standard of 15% to all shorelands within 300 feet of a river OHM and 1,000 feet of a lake OHM. Further, we would ask the committee to consider directing the DNR to give a longer time to implement the rule for the reasons stated above.

Thank you for your consideration in this matter.



Schultz, Kurt

From: jbrauer [jbrauer@new.rr.com]
Sent: Monday, September 07, 2009 1:24 PM
To: Sen.Ellis
Subject: NR115

Dear Sen. Ellis,

Could you please pass along my thoughts to the Chairman of the Senate Environment Committee that will hold a public hearing on NR115 rules on Thursday Sept. 10th. Would be appreciated as I may not be able to get down to Madison to testify.

NR 115 sets a baseline of **MINIMUM** standards applicable across the state. Nothing in the proposed rule changes the core authority of counties and other local governments to establish more restrictive shoreland regulations for the lakes and streams within their boundaries. Many counties have developed innovative approaches to manage unique local resources within their shoreland ordinances in the past 40 years, and they can continue to do so. How the County chooses to implement NR 115 and/or strengthen county ordinances beyond the statewide minimum is critically important.

A one-size-fits all approach cannot possibly do justice to Wisconsin's marvelous and globally significant collection of lakes that range from the largest in the world—Lake Superior—to more than 15,000 smaller ones. Some of our lakes are remote and little used. Others are busy with boaters and anglers and have densely developed shores. Pristine North Woods lakes certainly warrant different development standards than those for highly developed shores in more populous areas.

The Winnebago Pool is a diverse body of water, covering over 5400 miles of rivers and streams. The four main lakes, Winnebago, Butte des Morts, Winneconne and Poygan are actually flowages that **MAY NEED** amendments to the NR115 rule as they need a separate set of rules for good shoreline management. I sight a few examples for consideration. Buffer zones are expensive to create and are the expense of the property owner. Buffer zones can be wiped out by ice shoves, which would create hardships for the property owners to replace them. Also, the 250 sq ft. outbuilding size needs to be increased to at least 800 sq. feet. The height of a building is all that needs to be addressed under NR115, not the size of the structure. Here's why. On the Winnebago Chain of waters there are many channels that were created as boat harbors because lakes the size of Winnebago get very rough. The standard boat size used on lakes this size are often over 18 feet in length, and when on trailers they will not fit in a structure that is only 250 sq. ft. (These boats are all 8 feet wide, have about 4 feet of trailer tongue on the front and about 2 feet of motor overhang on the rear)

The revised NR115 rules should also take into consideration that flowages are a lot different than smaller spring fed lakes mostly north of Hwy 29 in Wisconsin. Lake Winnebago for example has four cities on it. These cities do not have to abide by NR115 rules with buffer zones, minimum outbuilding sizes etc. Isn't it segregation when Townships and Cities do not have to abide by shoreland rules?

Jack Brauer

9/8/2009

5736 I Ah Maytah Rd

Oshkosh, WI 54901



WISCONSIN STATE LEGISLATURE



September 8, 2009

To: Senate Natural Resources Committee

From: Jim Brakken, Bayfield County Lakes Forum & Northwest Waters Consortium

Re: NR 115 definitions and recommended clarifications

Dear Senators:

I represent the Bayfield County Lakes Forum that, in turn, represents 23 lake organizations and over 3000 waterfront home owners. We also work for the interests of the many thousands of people who come to Bayfield County to enjoy our clean, healthy, beautiful lakes and streams.

I am also representing the Northwest Wisconsin Waters Consortium. Northwest Waters is comprised of the countywide lake associations from ten counties in northwest Wisconsin. I am President of the Cable Lake Association and a Past-president of the Wisconsin Association of Lakes but do not represent WAL or the CLA on this issue.

The proposed revision of NR 115 before you is, in our opinion, superior in many respects to the current regulation. In general, the BCLF and Northwest Waters support it.

However, the proposed rule has some omissions and shortcomings which should be addressed now, when the simple changes can easily be made, rather than in future years, when the process will be far more difficult. The four issues discussed below and the changes we recommend to the draft rule will make it clearer, more consistent and more effective in protecting the public trust in surface waters. The first two of these are very simple changes, asking only for definitions to be clarified. We feel the State has an obligation to offer clear definitions.

1. Building height is limited to 35 feet, but the measurement is not defined. Numeric parameters must have a clear definition so they will be consistently applied. Building height should be defined as 'the vertical distance from the lowest point on the structure which faces the adjacent water body to the highest point on the roof including decorative appendages such as cupolas but excluding utilitarian appendages such as antennae, chimneys and vents'. See the illustration A. It shows that the proposed language can be measured several ways. This should be made clearer so there is only one way to measure building height.
2. The setback from the Ordinary High Water Mark is specified as 75 feet minimum for new structures and 35 feet for lateral expansion of existing structures. The definition is incomplete as, once again, it does not include the method of measurement. Setback from OHWM should be defined as 'the horizontal distance from the OHWM to the part of the structure nearest to the OHWM'. The nearest part of the structure may be roof overhangs, alcoves, stairs, decks and other features which extend beyond the main walls or foundation. See illustration B.
3. The proposed rule relies heavily on restrictions on the total area of impervious surfaces to limit the size of structures and areas of hard surfaces such as drive ways as a means of reducing high volumes of runoff. Scientific studies have shown that impervious areas as small as 10% of the

portion of the lot near the water body will cause measurable increases in nutrient flow to our lakes and streams. Other studies have shown that lawns deliver 8 times more nutrients to the water body than an undisturbed wild ground cover. The rule allows up to 30% of the total area of the lot to be impervious. The major problem with the proposed revision is that it does not limit the absolute size of the impervious surface area because the allowance is computed based on the total area of the lot. The result is that a deeper lot with the same frontage may have proportionately greater impervious surface area. Controlling the runoff from such large areas will be difficult and expensive. See illustration C. The calculation of allowable impervious surface area should be based on the area of the lot within 200 feet of the OHWM. Impervious surface area percentage is the area of impervious surface within 200 feet of the OHWM divided by the area of the lot within 200 feet of the OHWM times 100%. See illustration D.

4. The draft rule allows lateral expansion of nonconforming (to OHWM setback) structures as close as 35 feet from the OHWM. It requires mitigation in such cases. However, if the expansion is 35 feet from the OHWM there will be room for only 10 feet or so of restored vegetative buffer. That will be insufficient to screen the addition from the water body or to absorb much of the runoff from the impervious surfaces associated with it. See illustration E. Lateral expansion of nonconforming structures should be allowed no closer than 50 feet of the OHWM and mitigation should include restoration of a vegetative buffer of at least 25 feet in depth between the structure and the OHWM. See illustration F.

Again, the Bayfield County Lakes Forum and Northwest Waters Consortium feel these are important and easy fixes that would make the proposed NR 115 revision a far better tool than as is proposed. They will make the counties' work easier and will save us all from having to work for future corrective revisions. I urge you to consider applying these four improvements. Thank you.

Respectfully submitted,

Jim Brakken

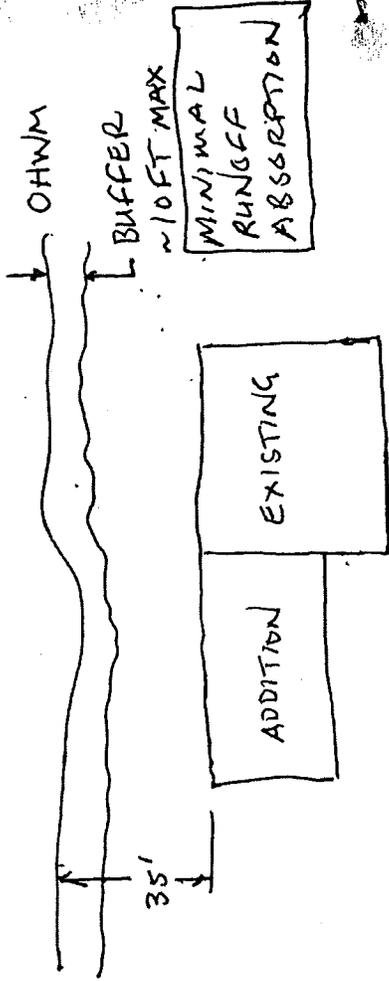
BCLF and Northwest Waters Volunteer

45255 East Cable Lake Road

Cable, WI 54821

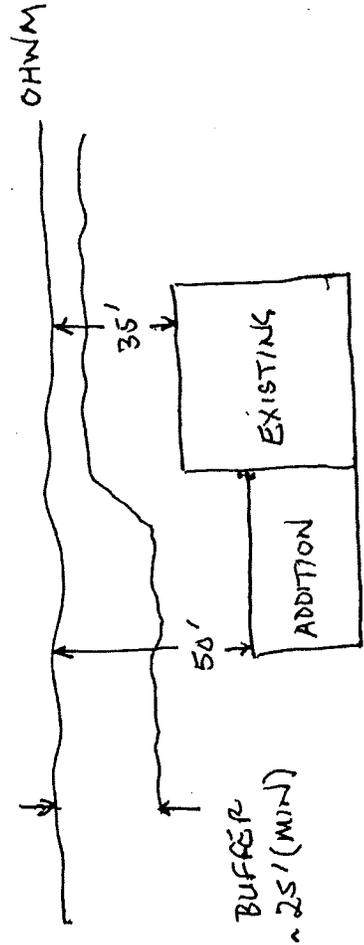
Jim.Brakken@Yahoo.com

LATERAL EXPANSION SETBACK
35 FT FROM OHWM (MIN)



(E)

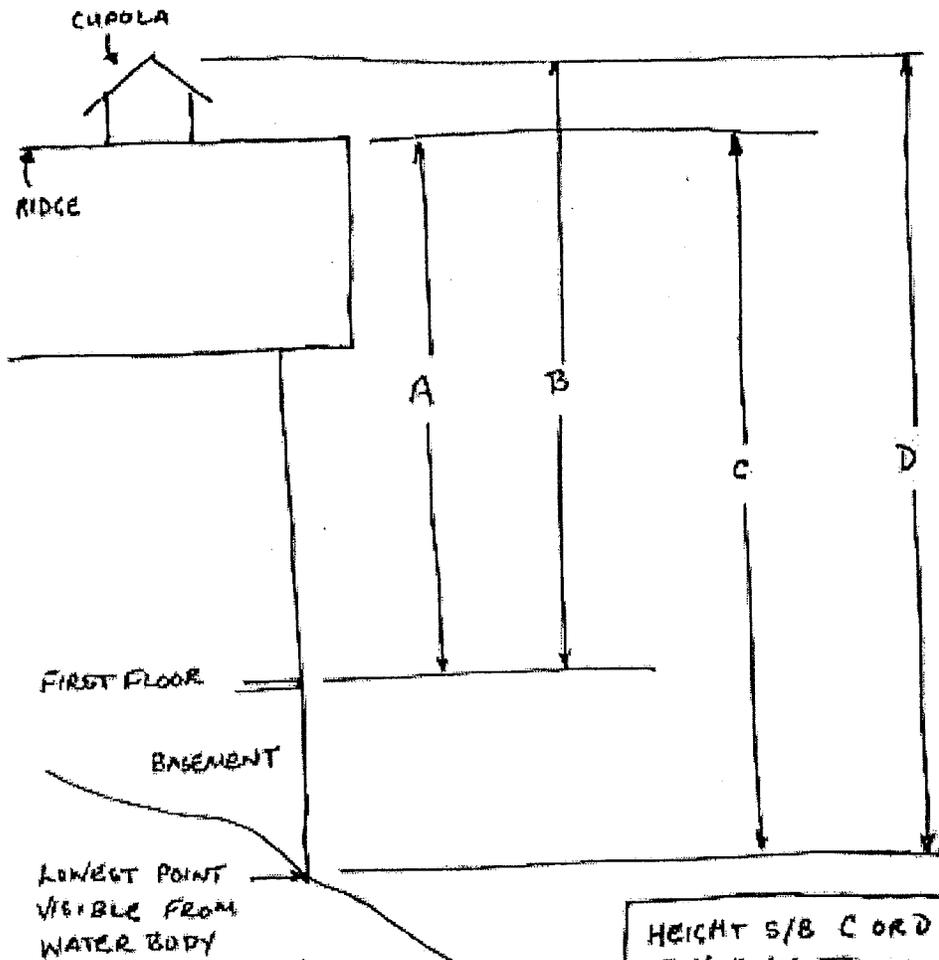
LATERAL EXPANSION SETBACK
50 FT FROM OHWM



DEEPER BUFFER INCREASES MITIGATION, FILTERS AND ABSORBS RUNOFF

(F)

BUILDING HEIGHT 35 FT (MAX)

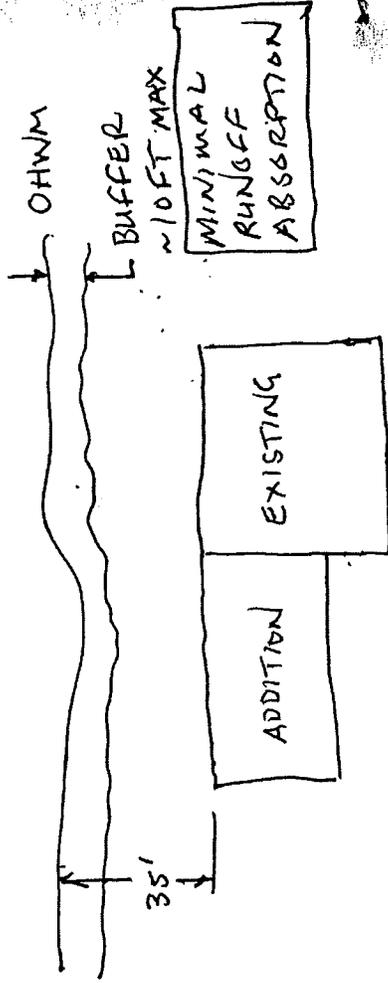


'D' is the "intent" but developers will chase 'A' if definition is not clarified.

HEIGHT S/B C ORD
35' MAX TO
200 FT FROM CHWM

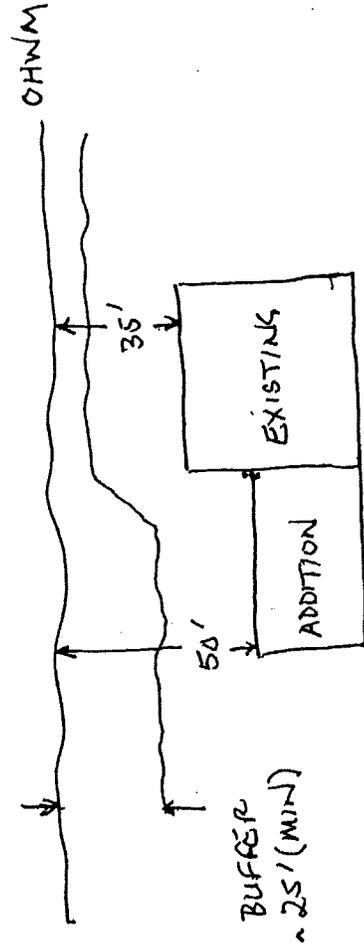
(A)

LATERAL EXPANSION SETBACK
35 FT FROM OHWM (MIN)



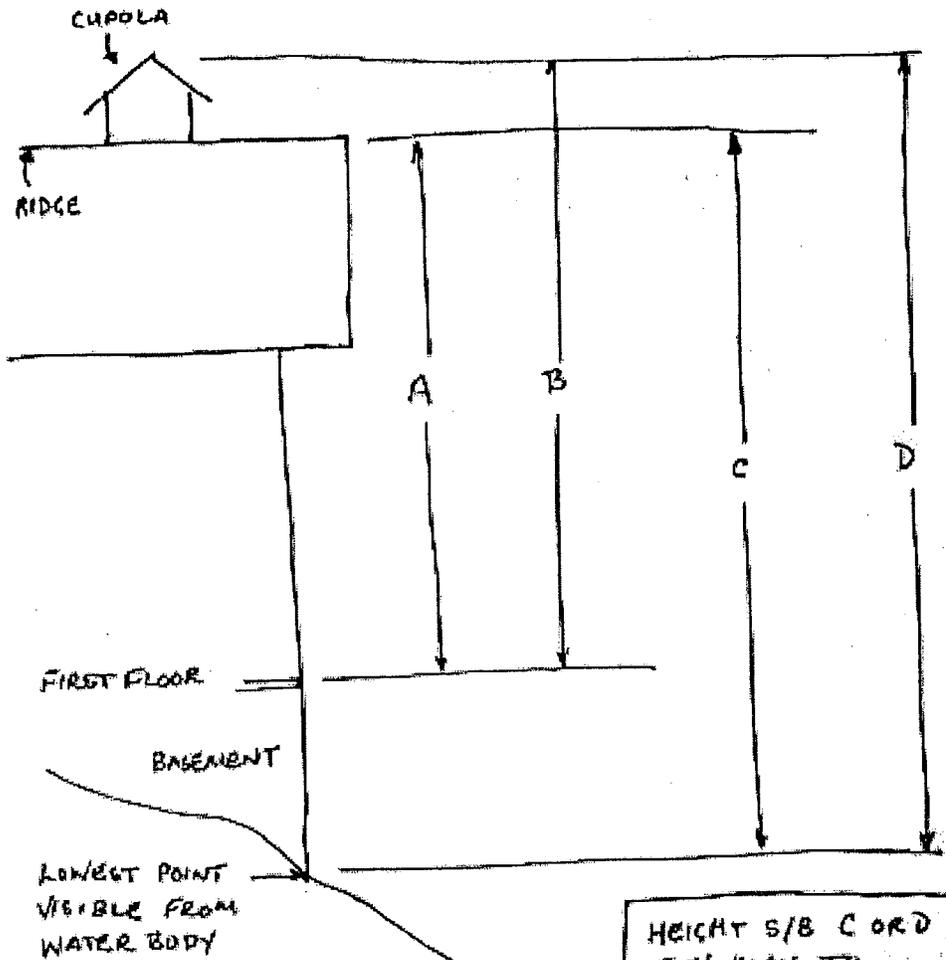
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LATERAL EXPANSION SETBACK
50 FT FROM OHWM



(F)

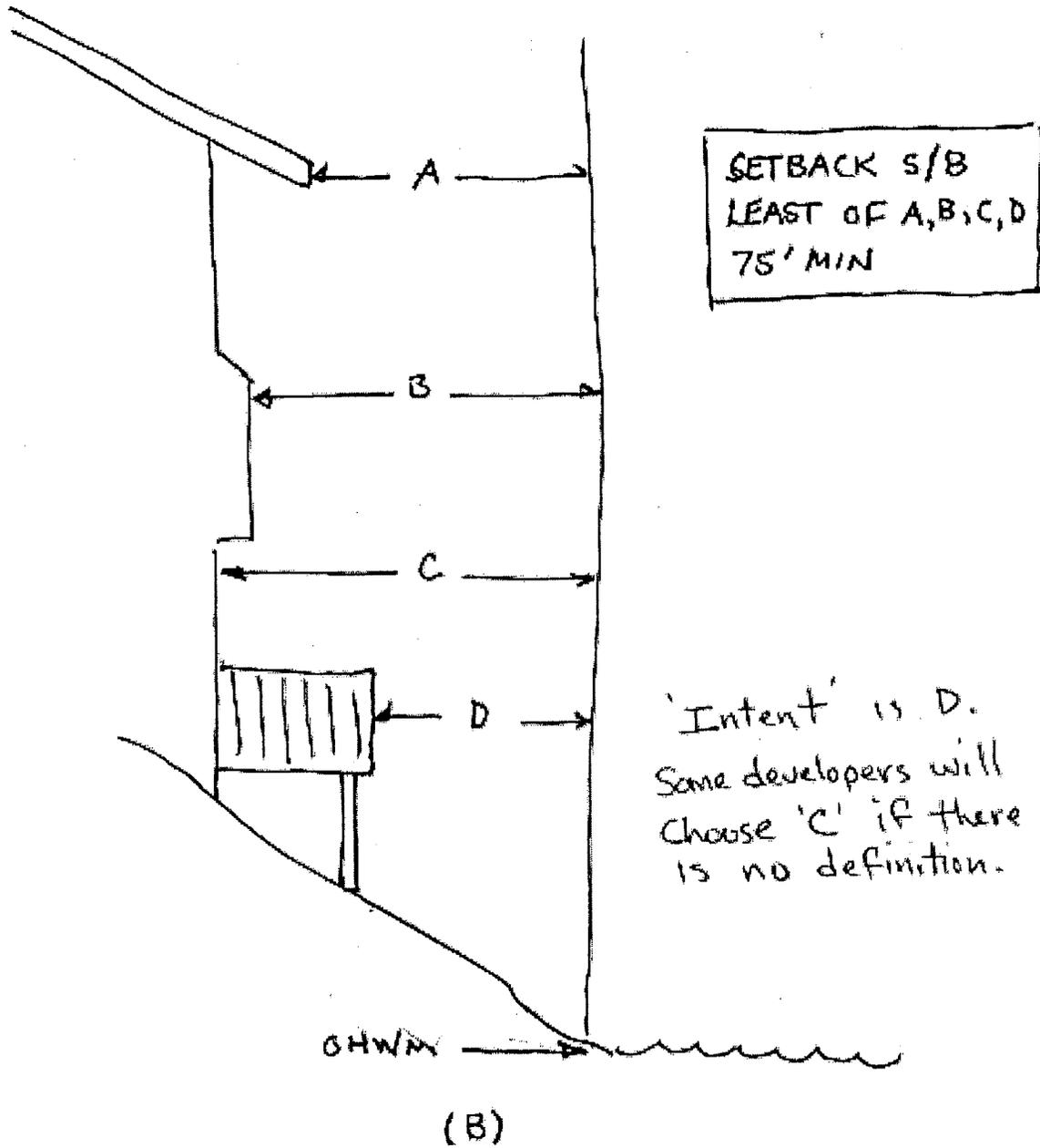
BUILDING HEIGHT 35 FT (MAX)



'D' is the "intent" but developers will chase 'A' if definition is not clarified.

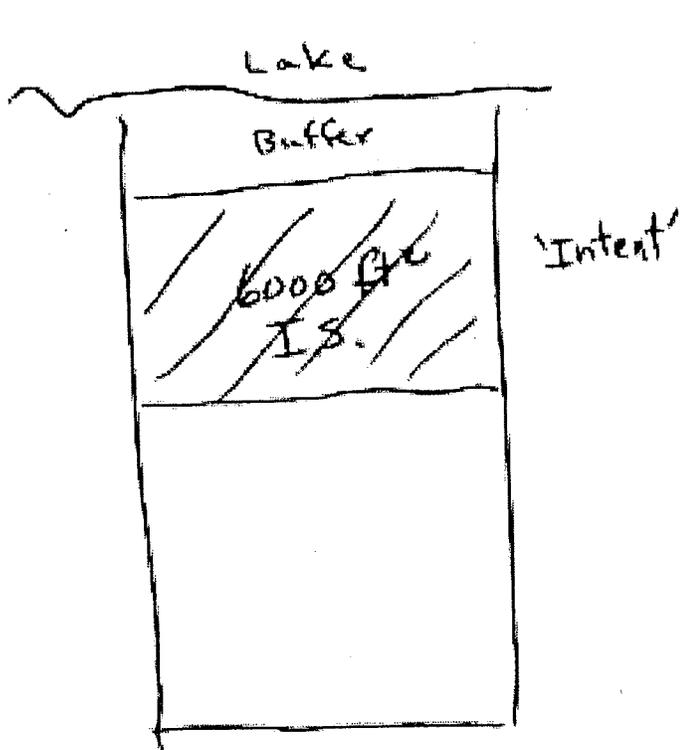
(A)

SETBACK FROM OHWM 75 FT (MIN)

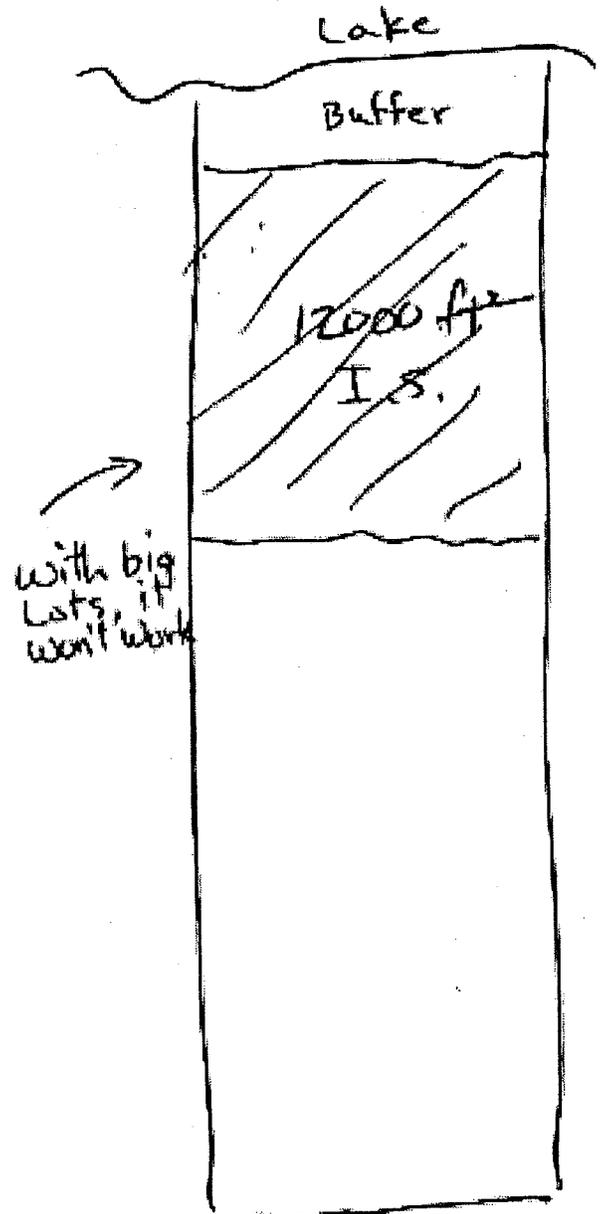


(B)

IMPERVIOUS SURFACE AREA
30% OF TOTAL LOT AREA



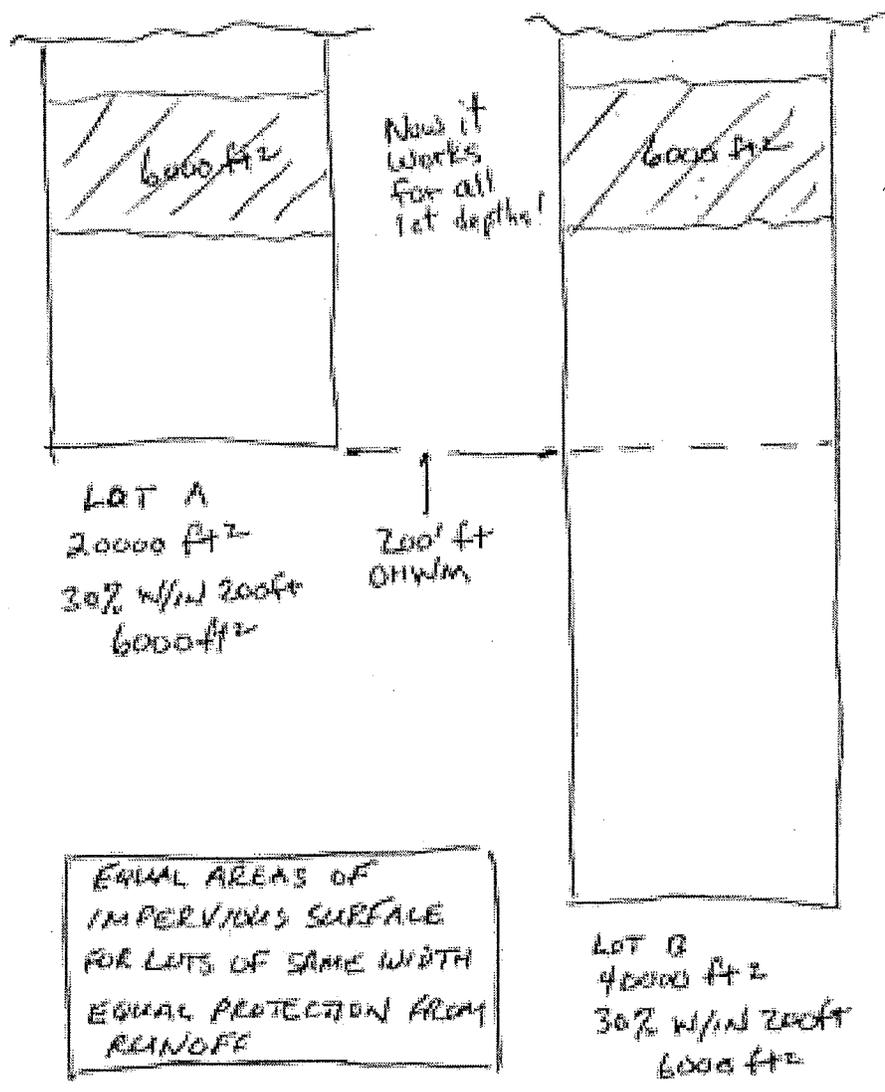
LOT A
100' W x 200' D
20000 ft²
30% = 6000 ft²



LOT B
100' W x 400' D
40000 ft²
30% = 12000 ft²

IMPERVIOUS SURFACE
AREA IS NOT CAPPED
DOUBLE RUNOFF FROM
LOT B. VS. LOT A

IMPERVIOUS SURFACE AREA
30% OF LOT AREA W/IN 200 FT OF OHWM



(D)