

FILED

08-15-2025

Clerk of Circuit Court

Cindy R. Hamre Incha

2025CV000366

STATE OF WISCONSIN

CIRCUIT COURT

JEFFERSON

Boat House of Concord Real Estate, LLC vs. Town of
Concord et al**Electronic Filing
Notice**

Case No. 2025CV000366

Class Code: Declaratory Judgment

TOWN OF CONCORD
W1095 CONCORD CENTER DRIVE
SULLIVAN WI 53178

Case number 2025CV000366 was electronically filed with/converted by the Jefferson County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

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If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: c17a1f

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If you have questions regarding this notice, please contact the Clerk of Circuit Court at 920-674-8669.

Jefferson County Circuit Court
Date: August 18, 2025

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STATE OF WISCONSIN

CIRCUIT COURT

JEFFERSON COUNTY

BOAT HOUSE OF CONCORD REAL ESTATE, LLC
a Wisconsin limited liability company
N7536 Sterlingworth Drive
Elkhorn, WI 53121,

Plaintiff,

v.

TOWN OF CONCORD
W1095 Concord Center Drive
Sullivan, WI 53178

Case No. _____
30701 – Declaratory Judgment

and

CONCORD TOWN BOARD
W1095 Concord Center Drive
Sullivan, WI 53178,

Defendants.

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.



Within 20 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to or electronically filed with the Court, whose address is 311 S. Center Avenue, Jefferson, Wisconsin 53549, and to Plaintiff's attorney, Jessica Hutson Polakowski, Reinhart Boerner Van Deuren s.c., whose address is 22 E. Mifflin Street, Suite 700, Madison, WI 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 15th day of August, 2025.

Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 700
Madison, WI 53703

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Attorneys for Plaintiff

54393592

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STATE OF WISCONSIN

CIRCUIT COURT

JEFFERSON COUNTY

BOAT HOUSE OF CONCORD REAL ESTATE, LLC
a Wisconsin limited liability company
N7536 Sterlingworth Drive
Elkhorn, WI 53121,

Plaintiff,

v.

TOWN OF CONCORD
W1095 Concord Center Drive
Sullivan, WI 53178

Case No. _____
30701 – Declaratory Judgment

and

CONCORD TOWN BOARD
W1095 Concord Center Drive
Sullivan, WI 53178,

Defendants.

COMPLAINT

Plaintiff Boat House of Concord Real Estate, LLC (“Plaintiff”), by its attorneys, Reinhart Boerner Van Deuren s.c., for its Complaint against Town of Concord, Wisconsin and Concord Town Board (“Defendants”), hereby alleges as follows:

PARTIES

1. Plaintiff is a Wisconsin limited liability company with its principal place of business at N7536 Sterlingworth Drive, Elkhorn, WI 53121.

2. Defendant Town of Concord, Wisconsin (the “Town”) is a body corporate and politic organized and existing under Chapter 60 of the Wisconsin Statutes, located in Jefferson County, Wisconsin, with its principal office at W1095 Concord Center Drive, Sullivan, WI 53178.

3. Defendant Concord Town Board (the “Town Board”) is a body corporate and politic organized and existing under Chapter 60 of the Wisconsin Statutes, located in Jefferson County, Wisconsin, with its principal office at W1095 Concord Center Drive, Sullivan, WI 53178.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of the dispute pursuant to Article VII § 8 of the Wisconsin Constitution, which provides for subject matter jurisdiction over all civil matters within this state.

5. This Court has personal jurisdiction over Defendants pursuant to Wis. Stat. §§ 801.03(2) and 801.05(1)(b).

6. Venue is proper pursuant to Wis. Stat. § 801.50(2)(a) because the claim that is the subject of this suit arose in Jefferson County, where the Town Board voted to disapprove the rezone petition and “disallow” the rezoning ordinance adopted by the Jefferson County Board’s rezoning ordinance.

FACTUAL BACKGROUND

1. Plaintiff Boat House of Concord Real Estate, LLC is a recreational boat dealer.
2. Plaintiff owns an approximately 6-acre parcel of land in the Town of Concord, Wisconsin, known as Tax Key Number 006-0716-1641-003, which it uses as a boat storage facility (the “Boat House Parcel”).
3. The Town is in Jefferson County, Wisconsin (the “County”).
4. In November 2021, the Boat House Parcel was directly adjacent to a 24-acre parcel of land (tax parcel no. 006-0716-1642-000), which was owned by Donald and Nancy Brunson (the “Brunson Parcel”).
5. The Town has adopted the Jefferson County Zoning Code (the “Zoning Code”).
6. Under the Zoning Code, the Brunson Parcel was zoned A-1 Exclusive Agricultural.
7. In November 2021, Plaintiff sought to purchase a 7.4-acre portion of the Brunson Parcel (the “Property”), with an intention to expand its boat storage business.
8. In furtherance of the potential sale of the Property to Plaintiff, on November 18, 2021, Donald and Nancy Brunson filed a petition, identified as petition R4379A-2022, asking the Jefferson County Board (the “County Board”) to rezone the Property—that is, 7.4 acres of the 24-acre tax parcel no. 006-0716-1642-000—from an A-1 (Exclusive Agricultural) to A-2 (Agricultural and Rural Business) zoning classification (the “Rezone Petition”).
9. The County Board referred the Rezone Petition to the Town.
10. On December 22, 2021, the Town of Concord Plan Commission considered the Rezone Petition and voted to recommend denial of the petition.

11. However, on January 10, 2022, the Town Board considered the Rezone Petition and voted 2-1 to approve the rezoning.

12. The Town Board then returned the Rezone Petition to Jefferson County for consideration.

13. At the County level, the Rezone Petition was first considered by the Jefferson County Planning & Zoning Committee (the “County Zoning Committee”), which is Jefferson County’s designated zoning agency.

14. The County Zoning Committee conducted a site inspection, held a public hearing (the “Public Hearing”) and held two decision meetings at which it discussed the Rezone Petition (collectively, the “First Decision Meeting” and the “Second Decision Meeting”).

15. On February 17, 2022, the County Zoning Committee held its Public Hearing on the Rezone Petition. A true and correct copy of the Notice of Public Hearing is attached to this Complaint as Exhibit 1.

16. Plaintiff’s representatives spoke in favor of the Rezone Petition and several town officials and residents spoke in opposition.

17. The Town did not exercise its right to disapprove of the County zoning amendment proposed by the Rezone Petition within 10 days after the Public Hearing pursuant to Wis. Stat. § 59.69(5)(e)3.

18. The Town did not exercise its right to file a 20-day extension of time for disapproving the zoning amendment proposed by the Rezone Petition pursuant to Wis. Stat. § 59.69(5)(e)3m.

19. On February 28, 2022, the County Zoning Committee held its First Decision Meeting on the Rezone Petition. After much discussion, the County Zoning Committee

ultimately voted to table its consideration of the Rezone Petition in order to allow time for issues raised by opponents to the Rezone Petition to be investigated.

20. On March 28, 2022, the County Zoning Committee reconvened to consider the Rezone Petition at its Second Decision Meeting and voted unanimously to recommend the approval of the Rezone Petition and adopt a zoning ordinance amendment that would rezone the Property to the A-2 Agricultural and Rural Business zoning district.

21. The County Zoning Committee's vote of approval was commemorated in a written decision, on a preprinted form document.

22. As a result of the County Zoning Committee's decision, a draft ordinance was prepared and provided to the County Board for consideration.

23. On April 19, 2022, the County Board considered and voted to approve the Rezone Petition for the rezone of the Property from A-1 to A-2 and voted to adopt the rezoning ordinance (the "Ordinance"). A true and correct copy of the County Board Meeting Minutes from April 19, 2022 is attached to this Complaint as Exhibit 2.

24. Upon information and belief, the County Clerk submitted a copy of the Ordinance within 7 days of its enactment to the Town Clerk, pursuant to Wis. Stat. § 59.69(5)(e)6.

25. At the Town Board's meeting on May 9, 2022, the Rezone Petition was on the agenda for reconsideration. However, no action was taken by the Town Board on the Rezone Petition. True and correct copies of the agenda for the May 9, 2022 Town Board Meeting and the Town Board Meeting Minutes for May 9, 2022 are attached to this Complaint as Exhibits 3.1 and 3.2.

26. On June 24, 2022, Plaintiff purchased the Property from Donald and Nancy Brunson. The Property was assigned Tax Key Number 006-0716-1642-0001.

27. On October 14, 2022, Defend Town Plans, U.A., and several individuals (collectively “Defend Town”) filed a petition for a writ of certiorari in the Jefferson County Circuit Court (the “Circuit Court”) seeking review of the County Board’s adoption of the Ordinance.

28. Defend Town alleged that the County Board adopted the Ordinance without making findings that are required by Wis. Stat. § 91.48(1).

29. Defend Town further alleged that the Ordinance could not be reconciled with the comprehensive plans that had been adopted by the Town of Concord and Jefferson County, and it asked the Circuit Court to enter an order vacating the County Board’s approval of the Ordinance.

30. The Circuit Court ordered briefing and held several hearings at which it elicited arguments from the parties. A significant focus of the arguments was on what the remedy should be if the court were to determine that the County Board was required to make findings under Wis. Stat. § 91.48(1) but failed to do so.

31. The County Board asked the Circuit Court to “remand[] for any correction that the Court deems appropriate” rather than “reversing or undoing the zoning amendment.”

32. Defend Town argued that a remand would be futile because, it argued, the County Board could not reasonably make the findings required by Wis. Stat. § 91.48(1) based on the alleged inconsistencies between the Ordinance and the comprehensive plans that had been adopted by the Town and County.

33. The Circuit Court determined that the rezoning ordinance must be “invalidat[ed]” and “vacat[ed]” because the County Board did not make findings that were required by Wis. Stat. § 91.48(1). However, the Circuit Court was “not prepared to say” that it would be “an

impossibility” for the County Board to make the required findings because the court did not “have the sort of record” that would allow the court “to say that,” and because “there is a considerable amount of deference that has to be left with the local governing body.”

34. Following the hearing, the Circuit Court entered a judgment against the County Board that declared the Ordinance “null and void and/or vacated as appropriate.”

35. The County Board appealed.

36. On October 17, 2024, the Court of Appeals issued its decision. A true and correct copy of the Court of Appeals’ decision is attached to this Complaint as Exhibit 4.

37. Based on its certiorari review, the Court of Appeals concluded that the Ordinance was invalid because the County Board did not make the findings required by Wis. Stat. § 91.48(1). However, the Court of Appeals rejected Defend Town’s argument that a remand would be futile. Rather, the Court of Appeals concluded that “because the County Board did not make any of the required findings, including that a rezoning would be consistent with Jefferson County’s comprehensive plan, there is no determination for us to assess within the limited scope of certiorari review.”

38. In so holding, the Court of Appeals noted its disagreement with Defend Town’s argument that “any effort to rezone. . . would have to start with a new petition to rezone,” because “the error that the County Board made in this case occurred after the rezoning petition was filed, and we have concluded that the rezoning ordinance was not validly enacted...Defend Town does not provide any basis for concluding that the rezoning petition was itself invalid or defective in some respect.” (*See* Ex. 4, p. 27, fn. 14.)

39. The Court of Appeals affirmed the Circuit Court's decision as modified, and remanded for the Circuit Court to enter an order that remanded the matter to the County Board for additional proceedings consistent with the requirements of Wis. Stat. § 91.48(1).

40. On January 27, 2025, the County Zoning Committee considered the Rezone Petition pursuant to the Court's order and unanimously voted to recommend its approval, which the County Zoning Committee found met the standards for rezoning set forth in Jefferson County Zoning Code section 11.11(e) and section 91.48 of the Wisconsin Statutes. The County Zoning Committee considered the County zoning ordinance regulations and the County's Comprehensive Plan and Farmland Preservation Plan guidelines. True and correct copies of the Staff Report & Decision of the Jefferson County Planning & Zoning Committee and the Jefferson County Zoning Committee Meeting Minutes from January 27, 2025 are attached to this Complaint as Exhibits 5 and 6.

41. On February 11, 2025, the County Board voted 20-7 to approve the Rezone Petition. The County Board "concur[red] with the analysis set forth in the . . . Staff Report & Decision of the Jefferson County Planning & Zoning Committee and adopt[ed] the findings set forth therein as the findings of the County Board." A true and correct copy of the Agenda for the Jefferson County Board Meeting on February 11, 2025 is attached to this Complaint as Exhibit 7.

42. On March 10, 2025, the Town Board adopted a resolution attempting to disapprove the Rezone Petition and "disallow" the Ordinance enacted by the County Board (the "March 10, 2025 Resolution"). A true and correct copy of the March 10, 2025 Resolution is attached to this Complaint as Exhibit 8.

43. During that meeting, Sally J. Williams, a member of the Town Planning Committee repeatedly told the Town Board that the Rezone Petition "was voided by the court."

NOTICE OF CLAIM

44. Pursuant to Wis. Stat. § 893.80(1d)(a), Plaintiff served written notice of the circumstances of the claim(s) described herein within 120 days after the March 10, 2025 Concord Town Board meeting, the events at which gave rise to the claim.

45. On April 15, 2025, Plaintiff mailed a “Notice of Circumstances of Claim and Notice of Claim Pursuant to Wis. Stat. § 893.80” via Certified Mail to the Concord Town Board and Town of Concord (care of the Town Clerk, Brian Neumann (pursuant to Wis. Stat. § 801.11(4)(a)(2)), the Town Chairperson, Ted Mueller (pursuant to Wis. Stat. § 801.11(4)(a)(2)), and the Town Planning Committee Secretary, Sally Williams) at the Town of Concord Community Center (W1095 Concord Center Drive, Sullivan, WI 53178). A true and correct copy of the Notice of Circumstances of Claim and Notice of Claim is attached hereto as Exhibit 9.

46. On April 15, 2025, Plaintiff served the Concord Town Board and Town of Concord, via service on the Town Clerk, Brian Neumann (pursuant to Wis. Stat. § 801.11(4)(a)(2)) at N6830 County Road E, Oconomowoc, WI, 53066 and via e-mail to clerk@concord.wi.gov, with a “Notice of Circumstances of Claim and Notice of Claim Pursuant to Wis. Stat. § 893.80.” A true and correct copy of the Notice of Circumstances of Claim and Notice of Claim is attached hereto as Exhibit 10.

47. On April 15, 2025, Plaintiff also served the Concord Town Board and Town of Concord, via service on the Town Chairperson, Ted Mueller (pursuant to Wis. Stat. § 801.11(4)(a)(2)), at W2117 Northside Dr., Watertown, WI, 53094 and via email to muellerfarmswttn@yahoo.com, with a “Notice of Circumstances of Claim and Notice of Claim

Pursuant to Wis. Stat. § 893.80.” A true and correct copy of the Notice of Circumstances of Claim and Notice of Claim is attached hereto as Exhibit 11.

48. Pursuant to Wis. Stat. § 893.80(1d)(b), the Notice of Circumstances of Claim and Notice of Claim served on the Town Clerk, Brian Neumann, contained the address of Plaintiff and an itemized statement of the relief sought.

49. Pursuant to Wis. Stat. § 893.80(1g), the Concord Town Board and Town of Concord’s deadline to respond to Plaintiff’s Notice of Circumstances of Claim and Notice of Claim was August 13, 2025.

50. The Concord Town Board did not respond to Plaintiff’s Notice of Circumstances of Claim and Notice of Claim by August 13, 2025.

51. The Town of Concord did not respond to Plaintiff’s Notice of Circumstances of Claim and Notice of Claim by August 13, 2025.

52. Pursuant to Wis. Stat. § 893.80(1g), the Concord Town Board and Town of Concord’s failure to respond to Plaintiff’s Notice of Circumstances of Claim and Notice of Claim by August 13, 2025 constitutes a disallowance of the claim.

53. Pursuant to Wis. Stat. § 893.80(1d), Plaintiff has authority to bring this claim because the requirements of Wis. Stat. § 893.80(1d)(a) and § 893.80(1d)(b) have been met, and the claim has been disallowed pursuant to Wis. Stat. § 893.80(1g).

COUNT I

Declaratory Judgment Finding the Court of Appeals Did Not Vacate the Ordinance

54. Plaintiff realleges and incorporates the paragraphs above as if fully set forth herein.

55. Defend Towns challenged the Ordinance adopted by the County Board in the Jefferson County Circuit Court and Court of Appeals pursuant to Wis. Stat. § 59.694(10)(a).

56. Pursuant to Wis. Stat. § 59.694(10)(a), the court reviewing a decision filed by a person aggrieved of a decision of the board of a municipality “may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.”

57. The Circuit Court determined that the Ordinance must be “invalidat[ed]” and “vacat[ed]” because the County Board did not make findings that were required by Wis. Stat. § 91.48(1).

58. The Circuit Court entered judgment against the County Board and declared the Ordinance “null and void and/or vacated as appropriate.”

59. The Court of Appeals affirmed the Circuit Court’s decision “as modified” and remanded to the Circuit Court for the Circuit Court to enter an order that remanded the matter to the County Board for additional proceedings consistent with the requirements of Wis. Stat. § 91.48(1).

60. The Court of Appeals did not wholly affirm the Circuit Court and vacate the Ordinance.

61. The Court of Appeals’ decision required remand to the County Board solely for the County Board to make the findings required by Wis. Stat. § 91.48(1).

62. The Court of Appeals’ decision did not restart the entire procedure for review of county zoning amendments set forth in Wis. Stat. § 59.69(5)(e).

63. At a meeting on March 10, 2025, the Town Board adopted a resolution to disapprove the Rezone Petition and “disallow” the Ordinance enacted by the County Board.

64. There exists a real controversy between Plaintiff and the Town and Town Board, whose interests are adverse, regarding whether the Court of Appeals voided the Rezone Petition and vacated the Ordinance adopted by the County Board.

65. There is a dispute ripe for adjudication regarding whether the Court of Appeals voided the Rezone Petition and vacated the Ordinance adopted by the County Board.

66. The rights of the parties can only be determined by a declaratory judgment.

67. Because the Town Board's purported "disallowance" of the Ordinance will affect Plaintiff's permitted use of the Property, Plaintiff seeks declaratory relief under Wis. Stat. § 806.04 and asks this Court to declare that the Court of Appeals did not void the Rezone Petition or vacate the Ordinance adopted by the County Board.

COUNT II

Declaratory Judgment Finding the Town Board Lacks Authority to "Disallow" the Ordinance at this Time

68. Plaintiff realleges and incorporates the paragraphs above as if fully set forth herein.

69. Wis. Stat. § 59.69(5)(e) sets forth the statutorily prescribed procedure that towns must follow to review and disapprove of county zoning amendments.

70. Pursuant to Wis. Stat. § 59.69(5)(e)3. and § 59.69(5)(e)3m., towns may disapprove of a county zoning amendment within 10 days of the public hearing by the county zoning agency or file an extension lasting 20 days.

71. Wis. Stat. § 59.69(5)(e)3. provides: "[I]f a town affected by the proposed amendment disapproves of the proposed amendment, the town board of the town may file a certified copy of the resolution adopted by the [town] board disapproving of the petition with the

[county zoning] agency before, at, or within 10 days after the public hearing” by the county zoning agency on the petition for amendment of the county zoning ordinance.

72. Wis. Stat. § 59.69(5)(e)3m. provides: “A town may extend its time for disapproving any proposed amendment under subd. 3. by 20 days if the town board adopts a resolution providing for the extension and files a certified copy of the resolution with the clerk of the county in which the town is located. The 20-day extension shall remain in effect until the town board adopts a resolution rescinding the 20-day extension and files a certified copy of the resolution with the clerk of the county in which the town is located.”

73. Pursuant to Wis. Stat. § 59.69(5)(e)4., if the county zoning committee recommends approval of the petition for amendment, it shall draft a proposed ordinance and submit it to the county board with recommendations.

74. The statutorily prescribed timeframe set forth in Wis. Stat. § 59.69(5)(e) for the Town Board to disapprove of the zoning amendment proposed by the Rezone Petition has passed.

75. The County Zoning Committee, the County’s designated zoning agency, held a Public Hearing on the Rezone Petition on February 17, 2022.

76. The Town did not disapprove of the proposed amendment within 10 days of the Public Hearing by the County Zoning Committee by filing a certified copy of a resolution disapproving of the Rezone Petition with the County Zoning Committee as prescribed by Wis. Stat. § 59.69(5)(e)3.

77. The Town did not file a 20-day extension of time for disapproving the proposed amendment by adopting a resolution providing for the extension and filing a certified copy with the clerk of the County as prescribed by Wis. Stat. § 59.69(5)(e)3m.

78. The County Zoning Committee voted unanimously in favor of the Rezone Petition and recommended the rezoning on March 28, 2022.

79. As a result of the County Zoning Committee's decision, a draft ordinance was prepared and provided to the County Board for consideration.

80. On April 19, 2022, the County Board considered and approved the Rezone Petition for the rezone of the Property from A-1 to A-2 and voted to adopt the rezoning Ordinance.

81. Upon information and belief, the County Clerk submitted a copy of the Ordinance within 7 days of its enactment to the Town Clerk, pursuant to Wis. Stat. § 59.69(5)(e)6.

82. The Town Board did not vote to disapprove the Ordinance within 40 days of the date the Ordinance was enacted on April 19, 2022 (*i.e.*, on or before May 29, 2022).

83. Accordingly, the Town Board missed its opportunity set forth in Wis. Stat. § 59.69(5)(e) to object to and disapprove of the County zoning amendment proposed by the Rezone Petition.

84. Despite the fact that the Town Board missed its opportunity to object to and disapprove of the County zoning amendment raised by the Rezone Petition, at a meeting on March 10, 2025, the Town Board adopted a resolution to disapprove the Rezone Petition and "disallow" the Ordinance enacted by the County Board.

85. There exists a real controversy between Plaintiff and the Town Board, whose interests are adverse, regarding whether the Town Board has authority to disallow the Ordinance at this stage of the proceedings.

86. There is a dispute ripe for adjudication regarding whether the Town Board has authority to disallow the Ordinance at this stage of the proceedings.

87. The rights of the parties can only be determined by a declaratory judgment.

88. Because the Town Board's purported "disallowance" of the Ordinance will affect Plaintiff's permitted use of the Property, Plaintiff seeks declaratory relief under Wis. Stat. § 806.04 and asks this Court to declare that: (1) the Town Board lacks authority to disallow the Ordinance at this stage of the proceedings and (2) the Town Board's March 10, 2025 Resolution is null and void.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. A judgment declaring that the Ordinance was not voided by the Court;
- B. A judgment declaring that the Town Board lacks authority to disallow the Ordinance at this stage in the proceedings;
- C. A judgment declaring that the Town Board's March 10, 2025 Resolution is null and void;
- B. Such other equitable relief as this Court deems just and proper.

Dated this 15th day of August, 2025.

Reinhart Boerner Van Deuren s.c.
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