

NOTICE OF APPEAL

Process Server SEN  
Time 11:50 A.M. Date 3/8/2023  
Address Served 1210 Main St  
Oconto WI 54153  
Person Served Frank Calvert City Attorney  
City of Oconto

To:

✓ ZONING BOARD OF APPEALS  
CITY OF OCONTO  
c/o CITY ADMINISTRATOR  
1210 MAIN STREET  
OCONTO, WI 54153

FRANK CALVERT  
CITY ATTORNEY  
CITY OF OCONTO  
1210 MAIN STREET  
OCONTO, WI 54153

BUILDING INSPECTION  
AD-HOC COMMITTEE  
c/o CITY ADMINISTRATOR  
CITY OF OCONTO  
1210 MAIN STREET  
OCONTO, WI 54153

OCONTO CITY COUNCIL  
c/o CITY ADMINISTRATOR  
1210 MAIN STREET  
OCONTO, WI 54153

**PLEASE TAKE NOTICE THAT** the parties described in paragraph 1 below ("Appellant"), by his attorneys, von Briesen & Roper, S.C., hereby appeals to the Board of Zoning Appeals of the City of Oconto, pursuant to Section 62.23(7)(e)4 and 7 of the Wisconsin Statutes; and Section 13-1-280 of the City of Oconto Ordinances; from the decisions of the Oconto City Council and Building Inspection Ad-Hoc Committee to approve a three-year trial basis of an outdoor event venue. The Appellant alleges as follows as the grounds for this appeal:

1. Appellant Dale Thomson is an adult citizen of the State of Wisconsin who resides and owns property located at 106 Robin Lane, Oconto, Wisconsin 54153.

2. The City Council of the City of Oconto is the governing body delegated with authority to act for the government of the City of Oconto and good order for the City of Oconto pursuant to § 62.11 of the Wisconsin Statutes and City of Oconto Ordinances.

3. The City Council of the City of Oconto and the Building Inspection Ad-Hoc Committee of the City of Oconto are governing bodies delegated with the administrative authority to determine whether any proposed zoning amendment in the City of Oconto is in accord with the

official map, comprehensive plan and other applicable codes and ordinances of the City of Oconto.

4. On approximately February 8, 2020, the City of Oconto, through its respective councils, boards, commissions and/or municipal officials, approved a three-year trial basis memo regarding property located within the R-2 zoning district, permitting it to operate as a wedding/special event venue.

5. The decision to approve the three-year trial basis memo and to permit the property located within the R-2 zoning district to operate as a wedding/special event venue was an erroneous decision made by an administrative official and/or governing body in the enforcement of an ordinance adopted pursuant to Section 62.23(7) of the Wisconsin Statutes, as that phrase has been interpreted by the Wisconsin courts, in that:

- a. The decision was arbitrary and capricious and an abuse of discretion;
- b. The decision did not meet the standards set out in § 13-1-42 of the City's Ordinances related to permitted uses and conditional uses in the R-2 Residential District;
- c. The decision does not comply with the City of Oconto's Comprehensive Plan or Section 66.1001(3) of the Wisconsin Statutes;
- d. The decision is not authorized by the City of Oconto ordinances and is therefore void. *See Foresight, Inc. v. Babl*, 211 Wis. 2d 599, 605, 565 N.W.2d 279, 282 (Ct. App. 1997).
- e. The decision was not supported by or was not based on the record of public hearings held on these matters; and
- f. The decision bore no proper relationship to the public health, safety, morals and general welfare of the community.
- g. The decision was made without the action item being properly noticed,

without required public hearing(s) and without it being on the agenda.

6. The Appellant named above is aggrieved by the decision complained of herein.

a. Appellant is a resident of the City of Oconto whose property is adjacent to the property for which the three-year trial basis was granted.

b. Appellant has rights under § 13-1-280 of the City of Oconto Ordinances and Wisconsin Statutes § 62.23(7)(e)4.

c. Appellant's personal and/or property rights will be adversely affected by the decision complained of herein.

7. Pursuant to Section 62.23(7)(e)5 of the Wisconsin Statutes, this Appeal shall act as an automatic stay of all legal proceedings in furtherance of the action appealed from.

8. This appeal is being commenced by Appellant at this time to preserve all of Appellant's rights related to this matter, in light of the uncertainties regarding legal remedies, the unique nature of an approval of a three-year trial basis, and the procedure by which the approval was granted. By filing this Notice of Appeal, Appellant is not waiving or in any way relinquishing any rights or remedies that may be available to him.

**WHEREFORE**, pursuant to Sections 62.23(7)(e)4 and 7 of the Wisconsin Statutes, Section 13-1-280 of the City of Oconto Ordinances, and case law, Appellant requests that the City of Oconto Board of Zoning Appeals grant the following relief:

A. Reverse the decision of the City of Oconto City Council, Building Inspection Ad-Hoc Committee, and/or any other administrative official responsible for the decision to approve the three-year trial basis memo and to permit the property located within the R-2 zoning district to operate as a wedding/special event venue in the City of Oconto.

B. Interpret § 13-1-42 of the City of Oconto Ordinance related to permitted uses and

conditional uses in the R-2 Residential District to determine whether any of the activities proposed in the three-year trial basis memo permitting the property located within the R-2 zoning district to operate as a wedding/special event venue is a proper and lawful use of the subject property under the City of Oconto Ordinances.

C. Grant to Appellant a full *de novo* due process hearing in accordance with the principles of Section 68.11 of the Wisconsin Statutes or related common law principles;

D. Grant to Appellant such supplemental, other and further relief as may be just and equitable.

Dated this 4<sup>th</sup> day of March, 2022.

von BRIESEN & ROPER, S.C.

By



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