

JULIE A. BARTHELS  
Winnebago County Clerk  
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(920) 232-3430

**NOTICE OF COMMISSION, BOARD OR COMMITTEE MEETING**

**NAME OF COMMISSION**

**BOARD OR COMMITTEE:** Planning and Zoning Committee \*\*

**TIME OF MEETING:** 7:45 A.M.

**DATE OF MEETING:** FRIDAY, November 10, 2023

**PLACE OF MEETING:** DAVID ALBRECHT ADMINISTRATION BUILDING \*  
112 Otter Ave, 3<sup>rd</sup> Floor Conference Rm  
Oshkosh WI 54901

\* A link to the Zoom Meeting is available on the Winnebago County Meetings and Agenda calendar on the above indicated date. The public may observe the meeting but may not participate.

**ZOOM MEETING INFORMATION LINK:** <https://www.co.winnebago.wi.us/planning-and-zoning/p-z-meeting-links>

Additional instructions can be found at: <https://www.co.winnebago.wi.us/Planning-and-Zoning>.

For further detailed information concerning this notice, contact the Town Clerk or the Winnebago County Zoning office, where the application is available for viewing.

**SUBJECT MATTER OF MEETING**

**PLANNING MEETING**

1. Approval of minutes from: October 6<sup>th</sup> (P & Z Deliberative & Planning) October 27<sup>th</sup> (Viewing); October 31<sup>st</sup> (P & Z Public Hearing).
2. Public Comment on agenda items
3. Shoreland Zoning discussion – Attachment(s).
4. Review and Adopt the 2024 Planning & Zoning Meeting Schedule – Attachment(s)
5. Adjournment

**\*\* This meeting is also being posted as a committee meeting for: Aviation Committee**

***The Committee reserves the right to take up any item on the agenda at any time after the meeting commences.***

***Upon request, provisions will be made for people with disabilities upon 24 hours prior notice to the Office of the County Clerk. Phone Number: (920) 232-3430.***

WINNEBAGO COUNTY PLANNING & ZONING COMMITTEE  
**DELIBERATIVE**

October 6<sup>th</sup>, 2023

7:30 A.M.

Third Floor Conference Room – County Administration Building

**\*DELIBERATIVE HELD VIA ZOOM\***

**PRESENT**

John Hinz, Tom Egan, Shanah Zastera, Howard Miller, Maribeth Gabert (excused)

Daniel Lefebvre -Assistant Zoning Administrator, Caleb Edwards -Code Enforcement Officer, Adam Dorn -GIS Administrator Karen Fredrick -Court Reporter

The meeting was called to order by John Hinz at 7:30 A.M.

**BLUE SKY PROPERTY HOLDINGS, LLC – 4016 KNAPP ST, TOWN OF NEKIMI – CONDITIONAL USE (REVIEW)**

No Discussion.

**E. ST. PIERRE – 507 VASSAR LN, TOWN OF NEENAH – ZONING MAP AMENDMENT**

Committee reviewed findings in order to act on a zoning map amendment.

MOTION made by T. Egan to approve the special exception with findings as submitted, with the revision to change the initial staff report sanitary information from private system to municipal/public sewer. Seconded by H. Miller. Motion carried 4-0.

**ADJOURNMENT**

MOTION made by H. Miller to adjourn the meeting. Seconded by S. Zastera. Motion carried 4-0. Meeting adjourned at 7:33 A.M.

Respectfully submitted,

Daniel R. Lefebvre  
Assistant Zoning Administrator

WINNEBAGO COUNTY PLANNING & ZONING COMMITTEE  
**PLANNING MEETING**

October 6<sup>th</sup>, 2023

7:45 A.M.

Third Floor Conference Room – County Administration Building

**\*PLANNING MEETING HELD VIA ZOOM\***

**PRESENT**

John Hinz, Tom Egan, Shanah Zastera, Howard Miller, Maribeth Gabert (excused)

Jerry Bougie -Planning & Zoning Director, Adam Dorn -GIS Administrator,  
Daniel Lefebvre -Assistant Zoning Administrator, Caleb Edwards -Code Enforcement  
Officer, Liz Nichols -Property Lister, Paul Kaiser -Finance Director

The meeting was called to order by John Hinz at 7:30 A.M.

**APPROVAL OF MINUTES FROM: AUGUST 29<sup>TH</sup> (PUBLIC HEARING),  
SEPTEMBER 8<sup>TH</sup> (DELIBERATIVE & PLANNING MEETINGS),  
SEPTEMBER 22<sup>ND</sup> (VIEWING), SEPTEMBER 26<sup>TH</sup> (PUBLIC HEARING)**

MOTION made by S. Zastera to approve all minutes with amendment(s) brought forward by H. Miller to the September 8<sup>th</sup> (Planning Meeting). Seconded by T. Egan. Motion carried 4-0.

**PUBLIC COMMENT ON AGENDA ITEMS**

No discussion.

**REVIEW OF PROPOSED 2024 DEPARTMENT BUDGET (PLANNING,  
ZONING, GIS, LAND RECORDS, & PROPERTY LISTER)**

J. Bougie explained and discussed budget proposal with the Planning & Zoning Committee. Discussion with the Committee included finance information and explanations by P. Kaiser, updating permit and assessment fees with information by D. Lefebvre, departmental costs/trends, comprehensive plan updates, fund balances, GIS/911/LiDAR system updates/changes with explanation and discussion by A. Dorn, and a property listing budget explanation and discussion by L. Nichols.



**REVIEW & ACTION TO FORWARD TOWN ZONE CHANGES TO COUNTY BOARD.**

D. Lefebvre provided a memo which recommended forwarding a Town of Clayton zoning change for Jay Schultz to County Board.

MOTION to approve a Town of Clayton zoning change for Jay Schultz by T. Egan. Seconded by H. Miller. Motion carried 4-0.

D. Lefebvre provided a memo which recommended forwarding a Town of Winchester zoning change for Kristi Dercks to County Board.

MOTION to approve a Town of Winchester zoning change for Kristi Dercks by H. Miller. Seconded by S. Zastera. Motion carried 4-0.

D. Lefebvre provided a memo which recommended forwarding a Town of Vinland zoning change for Winnebago County to County Board.

MOTION to approve a Town of Vinland zoning change for Winnebago County by T. Egan. Seconded by H. Miller. Motion carried 4-0.

D. Lefebvre provided a memo which recommended forwarding a Town of Vinland zoning change for Sally Reinert to County Board.

MOTION to approve a Town of Vinland zoning change for Sally Reinert by S. Zastera. Seconded by H. Miller. Motion carried 4-0.

**ADJOURNMENT**

MOTION made by H. Miller to adjourn the meeting. Seconded by S. Zastera. Motion carried 4-0. Meeting adjourned at 8:22 A.M.

Respectfully submitted,

Daniel R. Lefebvre  
Assistant Zoning Administrator

Winnebago County  
Planning & Zoning committee  
**VIEWING**

October 27<sup>th</sup>, 2023

7:30 A.M.

112 Otter Ave – Winnebago County Administrative Building  
Oshkosh, WI

PRESENT: Supervisors John Hinz, Maribeth Gabert, Shanah Zastera.

EXCUSED: Supervisors Tom Egan & Howard Miller.

The following properties were viewed by the Committee:

1. **Storage in Black Wolf** - 3687 Fond du Lac Rd, Town of Black Wolf – Conditional Use - Review
2. **Green Meadow Enterprises** – 4304 County Rd N – Town of Nekimi – Planned Development & Zoning Change
3. **Scholar Ridge Estates** – 2689 County Rd II, Town of Clayton – Zoning Map Amendment

Meeting adjourned at 9:00 A.M.

Respectfully submitted,

Brian O'Rourke – Land Use Planner  
Recording Secretary

WINNEBAGO COUNTY  
PLANNING & ZONING COMMITTEE  
**PUBLIC HEARING**

October 31<sup>st</sup>, 2023

6:30 P.M.

1<sup>st</sup> Floor Conference Room – County Administration Building

\* Public Hearing held via Zoom

PRESENT: Supervisors John Hinz - Chairman, Maribeth Gabert, Howard Miller, Shanah Zastera, Brian P. O'Rourke - Land Use Planner, Daniel Lefebvre – Assistant Zoning Administrator, Caleb Edwards – Code Enforcement Officer, Karen Frederick – Court Reporter.

EXCUSED: Supervisor Tom Egan

The meeting was called to order by John Hinz, Chairperson, at 6:30 P.M.

1. Scholar Ridge Estates – 2689 County Rd II, Town of Clayton– Zoning Map Amendment.

Applicant is requesting a zoning change from "Non-Shoreland" (Town of Clayton zoning jurisdiction) to "R-2 - Shoreland", (Suburban Residential District) ", "R-3 - Shoreland" (Duplex Residential District), & "R-4 - Shoreland" (Multi-Family Residential District) for a proposed development.

B. O'Rourke provided a background of the request; during an on-site inspection by the DNR with regard to a preliminary plat that was being proposed at the above referenced location, they determined that an existing non-navigable drainage ditch was now navigable, placing a portion of the development in a shoreland area. Due to this determination a portion of the proposed development was now placed under County zoning jurisdiction. Therefore, a zoning change was required in order for the shoreland area to be changed to the above-referenced County zoning districts.

The Committee questioned if the Town of Clayton had any concerns or objections; B. O'Rourke stated that the Town had approved the preliminary plat that this Committee approved at their October 6<sup>th</sup> deliberative and was not aware of any objections by the Town.

H. Miller expressed concerns with the neighboring properties now being in a shoreland area and were not notified of the change in zoning jurisdictions, and also confirmed the Town of Clayton had no objections.

B. O'Rourke informed the Committee that an agenda item on their November 10<sup>th</sup> Planning meet would include a discussion and possible action item with regard to conducting a County shoreland zoning change of the adjacent properties that are affected by the DNR's navigability determination.

There was no further testimony on this item.

ADJOURNMENT

Motion to adjourn by H. Miller. Seconded by M. Gabert. Motion carried 4-0.

Meeting adjourned at 6:45 P.M.

Respectfully submitted,

Brian P. O'Rourke, AICP  
Land Use Planner



# Agenda Item Report



**Winnebago County**

*The Wave of the Future*

DATE: November 2, 2023

FROM: Jerry Bougie, Planning Director

RE: Shoreland Zoning discussion.

## **General Description:**

Winnebago County administers state mandated shoreland zoning throughout the unincorporated areas of the county within designated shoreland areas.

## **Action Requested:**

No action to be taken – for discussion purposes only.

## **Procedural Steps:**

Committee of Jurisdiction	<u>Planning and Zoning</u>	Meeting date:	<u>11/10/2023</u>
Action taken:	<u>N/A</u>	Vote:	<u>          </u>
Other Committee:	<u>N/A</u>	Meeting date:	<u>          </u>
Action taken:	<u>N/A</u>	Vote:	<u>          </u>
County Board	<u>N/A</u>	Meeting date:	<u>          </u>

## **Background:**

Winnebago County has been administering shoreland zoning since 1968 pursuant to requirements in state law.

## **Policy Discussion:**

Under state law, all counties in the state are mandated to carry out and enforce state shoreland zoning in designated shoreland areas of their unincorporated areas. These mandates are codified in sections 281.31, 59.692, 59.69, Wis. Stats. and Natural Resources Code NR-115. The Town of Winchester has recently submitted commentary regarding this authority. All ordinances in the County are the responsibility of the County Executive to carry out pursuant to ss 59.17(2), Wis. Stats. The commentary submitted by the Town of Winchester is currently under review by the County Executive's office.

## **Attachments:**

Town of Winchester Commentary



Report to Winnebago County Board  
October 17, 2023

Good evening. My name is Matt Olson and I am the Chairman for the Town of Winchester. I would like to thank the County Board and Chairman Egan for allowing me the opportunity to speak this evening. I will keep my comments brief, but I encourage anyone with questions to reach out.

I believe it is important that the County Board be made aware of the long-historied and ongoing overreach of authority which has become the status quo for the County Zoning Department as it relates to Shoreland and General Zoning. To provide a brief history, the County had administered zoning, both Shoreland and General, for many years. However, in 1999 when the State of Wisconsin adopted the Comprehensive Planning Law, the zoning landscape began to change. Towns were then given the opportunity to develop, adopt, administer, and enforce General Zoning through a statutorily defined process. The Town of Winchester completed this process, adopting its own General Zoning in 2013 which was then certified by the Wisconsin Department of Agriculture, Trade, and Consumer Protection in January 2014. In the years since there has been an ongoing debate between the Town and the County Zoning Department over which entity holds General Zoning authority. The County has and continues to refuse to acknowledge the statutory authority provided to the town.

Unfortunately, similar situations have expressed themselves statewide. In response, the Wisconsin Legislature enacted 2015 Wisconsin Act 41 which was further confirmed with 2019 Wisconsin Act 145 which clarified the legislative intent and confirmed towns' authority to apply their general zoning regulation within shoreland areas. It should be noted that this legislative authorization does NOT supersede the County's Shoreland Chapter 27 but DOES supersede Winnebago County General Zoning Chapter 23 by giving the Town of Winchester the authorization and jurisdiction over general zoning matters in the Town of Winchester including properties identified as shoreland.

Despite the action of the State Legislature, the Winnebago County Zoning Department has refused to recognize the Town's authority. In response, the Town reached out to State Representative Dave Murphy in 2020 and again to State Senator Rachel Cabral-Guevara earlier this year for even further clarification. Both inquiries resulted in statements from State of Wisconsin Legislative Council Principal Attorney Anna Henning. Attorney Henning's responses further confirm the Town's authority to exercise General Zoning administration and enforcement in shoreland areas.

This information was presented to the County Zoning Department which in turn presented it to Corporation Counsel Mary Anne Mueller who responded with the status quo, refusing to recognize the Town's authority and claiming the jurisdiction for the County—clearly an overreach of authority with the refusal to recognize the state legislative actions.

The stonewalling of the County Zoning Department is further exacerbated by the fact that the department, despite claiming jurisdiction, refuses to enforce its own codes. The town has had

numerous, ongoing activities which violate both the Town's AND the County's General Zoning regulations. The interference from the County Zoning Department has prevented the Town from taking enforcement action. While at the same time, the County will not enforce the violations, resulting in ongoing offenses.

The Town has received complaint after complaint regarding these activities but has no recourse because of the County's position. It is our hope to avoid litigation. Our goal is to work cooperatively with the Winnebago County Zoning Department to implement the County's Chapter 27 Shoreland regulations in tandem with the Town of Winchester General Zoning regulations. However, based on the Zoning Department's recent response to our requests, they are not willing to work with us. I am asking you, as the governing body, to take action to correct this situation.

Again, please feel free to reach out to me with any questions or for more information. Thank you for your time.

Matthew J. Olson  
Town of Winchester Chairman  
(920) 836-1769  
(920) 716-1100



# Wisconsin Legislative Council

Anne Sappenfield  
Director



TO: SENATOR RACHAEL CABRAL-GUEVARA

FROM: Anna Henning, Principal Attorney

RE: County Zoning Authority in Town Shoreland Areas

DATE: August 11, 2023

This memorandum, prepared at your request, summarizes current law regarding county zoning authority in town shoreland areas. In addition, it discusses whether a county may enforce county general zoning in town shoreland areas, despite a conflicting general town zoning ordinance, by incorporating the county's general zoning ordinance within the county's shoreland zoning ordinance by reference. For reasons described below, the likely answer to that question is no.

## COUNTY ZONING AUTHORITY IN TOWN SHORELAND AREAS

Shoreland zoning ordinances establish land use restrictions in shoreland areas<sup>1</sup> for purposes set forth in the subchapter of the statutes that governs the protection of navigable waters.<sup>2</sup> [s. 59.692 (1c), Stats.] General zoning ordinances establish land use restrictions in broader geographic areas and for a broader set of purposes. [See, e.g., ss. 59.69 (1) and 60.61, Stats.]

Shoreland zoning is primarily a county function.<sup>3</sup> Wisconsin's shoreland zoning law requires each county to enact a shoreland zoning ordinance to regulate land use in unincorporated shoreland areas. All requirements in a county shoreland zoning ordinance must relate to the purposes set forth in the section of the statutes relating to the protection of navigable waters. [s. 59.692 (1c), Stats.]

With some exceptions for preexisting ordinances, towns are generally not authorized to enact or enforce shoreland zoning ordinances. [s. 59.592 (2) (b), Stats.] Thus, counties have clear authority to enact and enforce shoreland zoning in shoreland areas located in towns, regardless of any conflicting town zoning ordinances. In addition, a county shoreland zoning ordinance generally preempts a county's general zoning ordinance with respect to matters relating to shorelands. [s. 59.592 (5), Stats.]

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<sup>1</sup> Land subject to shoreland zoning includes: (a) land located within 1,000 feet from the ordinary high-water mark of a lake, pond, or flowage; and (b) land located within 300 feet from a river or stream or to the landward side of the floodplain, whichever is greater. [s. 59.692 (1) (b), Stats.]

<sup>2</sup> Those purposes include: to limit the direct and cumulative impacts of shoreland development on water quality; to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect spawning grounds, fish, and aquatic life; to control building sites, placement of structures, and land uses; to preserve shore cover and natural beauty; and to promote the public health, safety, and general welfare. [s. 281.31 (1), Stats.]

<sup>3</sup> However, county shoreland zoning ordinances may not regulate matters more restrictively than the standards set forth in administrative rules promulgated by the Department of Natural Resources. [s. 59.692 (1d), Stats.]

The enforcement of general county zoning ordinances in town shoreland areas is more complicated. Generally, towns may “opt in” to general county zoning, or a town may instead adopt its own zoning.<sup>4</sup> Issues arise when a town and a county attempt to enforce conflicting general zoning ordinances in the same shoreland areas.

Over the past decade, successive legislative enactments have attempted to clarify questions relating to county general zoning authority in town shoreland areas, partly in response to court decisions.<sup>5</sup> Under current law, as affected by those enactments, towns are authorized to enforce town general zoning ordinances within shoreland areas, except that a town zoning ordinance generally “may not impose restrictions or requirements in shoreland areas with respect to matters regulated by a county shoreland zoning ordinance affecting the same shorelands.” [ss. 60.61 (3r) (b) and (c) and 60.62 (5) (b) and (c), Stats.] Stated another way, county shoreland zoning ordinances preempt town zoning with respect to matters regulated by a county’s shoreland zoning ordinance.<sup>6</sup>

## **APPLICATION TO A COUNTY SHORELAND ZONING ORDINANCE THAT INCORPORATES GENERAL ZONING BY REFERENCE**

You asked how current law regarding county zoning authority would apply to a situation in which a county has included a provision in its shoreland zoning ordinance that incorporates the county’s general zoning ordinance by reference. I am not aware of a published court decision that specifically addresses this question, and reasonable arguments could be made on both sides of the question based on the statutory language.

However, if a court were to consider the question, it seems likely that the court would conclude that such a provision is unenforceable in town shoreland areas that are subject to a conflicting town zoning ordinance, for several reasons. First, a court could reasonably conclude that a provision that incorporates a county’s general zoning ordinance in its entirety is outside of the scope of a county’s shoreland zoning authority. Current law, as affected by 2019 Wisconsin Act 145, specifies that the requirements in a county shoreland zoning ordinance “shall relate to the purposes” set forth in the chapter of the statutes relating to the protection of navigable waters. Although those purposes include the relatively general purpose of “promot[ing] the public health, safety, and general welfare” in addition to more specific purposes relating to environmental protection, the list of purposes for which shoreland zoning is authorized are not coextensive with the broader list of purposes for which a county may enact general zoning requirements. For that reason, incorporating a general zoning ordinance within a shoreland zoning ordinance is arguably outside the scope of purposes for which a county may enact a shoreland zoning ordinance.

Second, even if a court concluded that the incorporation provision was otherwise authorized, it might hold that it nonetheless does not preempt a town’s conflicting general zoning requirements. The statutes prohibit towns from “imposing restrictions or requirements with respect to matters regulated by a county shoreland zoning ordinance ... affecting the same shorelands....” [ss. 60.61 (3r) (c) and

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<sup>4</sup> General zoning enacted by a town is in some cases subject to county approval. [See, e.g., s. 60.62 (3) (a), Stats.]

<sup>5</sup> See *Hegwood v. Town of Eagle Zoning Board of Appeals*, 2013 WI App 118; and *Lagoon Lane, LLC v. Rice*, 2018 WI App 35; Legislative Council, 2015 Wisconsin Act 41, Act Memo; and 2019 Wisconsin Act 145.

<sup>6</sup> However, a requirement that would be preempted if it was enacted as part of a town’s general zoning ordinance might not be preempted if it is enacted as part of a town’s land subdivision ordinance. [See *State of Wis. ex rel. Anderson v. Town of Newbold*, 2019 WI App 59 (holding that a shoreland frontage requirement in a town’s land subdivision ordinance was not preempted by the county’s shoreland zoning ordinance).]



60.62 (5) (c), Stats.] Although a county could argue that it has encompassed all general zoning requirements within the scope of “matters regulated by a county shoreland zoning ordinance” by incorporating the county’s general zoning ordinance, Wisconsin courts generally attempt to give effect to “limiting language” and disfavor “superfluous language.” [See *Newbold*, 2019 WI App 59 at ¶ 18.] Allowing a county to include all general zoning requirements through incorporation would arguably render superfluous the statutory language “matters regulated by a county shoreland zoning ordinance.”

Finally, a court might rely on the legislative history to support a conclusion that the Legislature did not intend to allow counties to preempt towns’ general zoning authority in shoreland areas, except with respect to matters particular to shorelands. The Legislature enacted 2015 Wisconsin Act 41 for the purpose of overruling a court decision that concluded that towns lack general zoning authority in shoreland areas. After a second court case appeared to disregard the 2015 act, the Legislature enacted 2019 Wisconsin Act 145 to again clarify that towns retain the authority to enforce their general zoning ordinances in shoreland areas, except with respect to matters that are regulated by a county shoreland zoning ordinance. Taken together, those enactments arguably suggest a legislative intent to allow towns, rather than counties, to decide how land use restrictions that are not particular to shorelands should apply in shoreland areas, if the town has enacted a zoning ordinance to do so.

However, a court decision would be needed to answer this question authoritatively. Alternatively, an affected county’s corporation counsel could consider requesting an opinion from the Attorney General regarding this question. [s. 59.42 (1) (c), Stats.]

Please let me know if I can provide any further assistance.

AH:jal

2024 Planning & Zoning Meeting Schedule					
Application Deadline	Viewing Meeting	Public Hearing	Deliberative Meeting	Planning Meeting	Tentative Co. Board Action (Rezoning)
4:00 p.m.	7:30 a.m.	6:30 p.m.	7:30 a.m.	7:45 a.m.	6:00 p.m.
12/1/2023	1/26/2024	1/30/2024	2/9/2024	2/9/2024	2/27/2024
1/2/2024	2/23/2024	2/28/2024	3/8/2024	3/8/2024	3/19/2024
2/1/2024	3/22/2024	3/26/2024	4/5/2024	4/5/2024	4/23/2024
3/1/2024	4/26/2024	4/30/2024	5/10/2024	5/10/2024	5/21/2024
4/1/2024	5/24/2024	5/28/2024	6/7/2024	6/7/2024	6/18/2024
5/1/2024	6/21/2024	6/25/2024	7/12/2024	7/12/2024	7/16/2024
6/3/2024	7/26/2024	7/30/2024	8/9/2024	8/9/2024	8/20/2024
7/1/2024	8/23/2024	8/27/2024	9/6/2024	9/6/2024	9/17/2024
8/1/2024	9/20/2024	9/24/2024	10/4/2024	10/4/2024	10/15/2024
9/3/2024	10/25/2024	10/29/2024	11/8/2024	11/8/2024	11/19/2024
10/1/2024	11/15/2024	11/20/2024	12/6/2024	12/6/2024	12/17/2024
11/1/2024	12/13/2024	12/18/2024	1/10/2025	1/10/2025	1/21/2025
12/2/2024	1/24/2025	1/28/2025	2/7/2025	2/7/2025	2/17/2025

2023 DATES
2024 DATES
2025 DATES

**NOTE: Change from standard scheduling pattern**  
**\* date changed**

1. All applications, including fees, maps, and other required information, MUST be received by 4:00 p.m. on the application deadline date.
2. All times are as listed unless otherwise changed by the committee
3. Subdivision matters (variance/plats, etc.) will only be acted upon at the deliberative meeting, however all materials must be received by the application deadline.
4. County Board action on zoning changes will normally be on the third Tuesday of the month after the Public Hearing.

**Adopted by Planning & Zoning Committee on:** \_\_\_\_\_