

**NOTICE OF CIRCUMSTANCES GIVING RISE TO CLAIM
AND CLAIM PURSUANT TO WIS. STAT. § 893.80**

BY PERSONAL SERVICE

TO: Town of Land O' Lakes
4331 Highway B
P.O. Box 660
Land O' Lakes, WI 54540

Dan Balog (in his official capacity as the Town Chairman)
4331 Highway B
Land O' Lakes, WI 54540

FROM: Shawn & Erin Hill
296 E. 3rd Street
Elmhurst, IL 60126

Brian & Nancy Travis
6499 St. Clair Road
Land O' Lakes, WI 54540

PLEASE TAKE NOTICE that Shawn & Erin Hill and Brian & Nancy Travis, by their attorneys, Weld Riley, S.C., by Attorneys John B. Wagman, Anders B. Helquist, and Jeffrey A. Cornell, state that the following circumstances give rise to a claim hereafter ("Claim" or "Notice"):

Parties

1. Claimants, Shawn & Erin Hill (the "Hills"), are adult residents of the State of Illinois, with an address of 296 E. 3rd Street, Elmhurst, Illinois 60126. The Hills own a parcel of real property in the Town of Land o' Lakes, Vilas County, Wisconsin with an address of 7239 Big Lake Road, in the Town of Land O' Lakes, Vilas County, Wisconsin (the "Hill Property").
2. Claimants, Brian & Nancy Travis ("Travis"), are adult residents of the State of Wisconsin, whose family owns a parcel of real property in the Town of Land O' Lakes, Vilas County, Wisconsin with an address of 6499 St. Clair Road, Land O' Lakes, Wisconsin 54540 (the "Travis Property").
3. The Town of Land O' Lakes ("Town") is a local government unit and municipality organized and existing under ch. 60, Wis. Stats., and is located in Vilas County, Wisconsin. The Town has a mailing address of 4331 Highway B, P.O. Box 660, Land O' Lakes, Wisconsin 54540.

Town Ordinance

4. On May 21, 2025, the Town, through its Town Board of Supervisors, passed Ordinance No. 2025-02 (the "Ordinance") in an affirmative 2-1 vote. Town Supervisor Sam Otterpohl and Town Supervisor Kevin Konnow voted in favor of the Ordinance. A copy of the Ordinance is attached as Exhibit A to this Notice.
5. The Ordinance does not restrict wake surfing to limited areas of certain lakes. The Ordinance also does not simply restrict hours of wake surfing on lakes. Nor does the Ordinance limit wake surfing to certain days of the week. The Ordinance goes further.
6. The Ordinance attempts to completely prohibit wake surfing on every lake in the Town, including all lakes on the Cisco Chain of Lakes which border with Michigan. In effect, this ban targets a specific type of boat, a type of boat known as a "wake boat."
7. Wake boats are almost exclusively the watercraft used for wake surfing. Wake surfing allows a person on a "surf" board to ride the "wave" created by the wake boat without using a rope or going at a high rate of speed (unlike wakeboarding).
8. Wake surfing occurs at a significantly slower speed compared to higher-speed and higher-impact watersports like wakeboarding or water skiing.
9. Wake surfing expands access to recreational opportunities through the use of wake boats. Wake surfing is a "low impact" watersport that is accessible for many ages and ability levels, including people with disabilities, physical limitations or infirmities, or those that can no longer incur the harder falls associated with water skiing or wakeboarding at high speeds. With the lower speeds and nature of wake surfing, a person that can no longer water ski or wakeboard due to age, health, disability, or physical limitation can participate in wake surfing.
10. With slower speeds and the nature of wake surfing, youth can also safely enjoy this recreational watersport without the risks of injury incurred in higher-speed and higher-impact watersports like water skiing and wakeboarding.
11. The Ordinance also attempts to require wake boat operators to operate at a high speed at plane, regardless of water conditions or the safety of others around them. The Ordinance may require boat operators to operate in a careless, negligent or reckless manner which may endanger the operator's life, property or person or the life, property or person of another in order to comply with the Ordinance's attempts to prohibit slow speeds.
12. Prior to passage of the Ordinance, the Town voted on the Ordinance at a Town Board meeting a year earlier on June 19, 2024. The Ordinance was not adopted by a 3-0 vote.
13. In refusing to adopt the Ordinance at the June 19, 2024 meeting, the Town Board stated that the Town's insurer did not want the liability of the Ordinance.

14. The Town Board also cited the Town Attorney, Steve Garbowicz, that the Town has no ability to enforce the Ordinance.
15. Upon information and belief, neither the Town Board nor the Town Attorney drafted this Ordinance. It was drafted by outside private entities or persons, one of which was Richard F. Phillips ("Phillips") – an attorney who is unlicensed to practice law in Wisconsin.
16. Upon information and belief, in passing their Ordinance, the Town Board ignored their own licensed counsel and relied on the advice of Phillips to pass their Ordinance.
17. The Ordinance contains no definitions for any of its terms. Multiple terms in the Ordinance are vague (and therefore void for vagueness), lack fair notice to Claimants and others, and encourage arbitrary enforcement against Claimants and others.
18. The Wisconsin Department of Natural Resource's ("WDNR") own advisory review of the Ordinance concluded terms in the Ordinance are poorly defined and difficult to enforce.
19. Upon information and belief, the Town ignored the WDNR's concerns about subjectivity, vagueness and ambiguity, and enforceability of the Ordinance and instead relied on Phillips' advice as an unlicensed lawyer in Wisconsin in adopting the Ordinance.
20. In passing the Ordinance, the Town Board acknowledged the difficulty of enforcing the Ordinance's regulations.

Riparian Property Owners and Wake Boat Owners

21. The Hill Property abuts West Bay Lake in the Town of Land O' Lakes and the Hills are a riparian owner on West Bay Lake.
22. The Hills own a boat – a 2008 Mastercraft X30 (the "Hill Boat") – which they use for wake surfing with family and friends on the Cisco Chain of Lakes. The Hill Boat is designed to be used as a wake boat for wake surfing.
23. The Hill Boat is not transported from lake to lake during the summer season, is used exclusively on the Cisco Chain of Lakes, and has not been and is not used on other lakes.
24. The Ordinance attempts to completely prohibit the ability of the Hills to use the Hill Boat for its intended purpose and use – wake surfing.
25. The Hills are damaged through the taking of their personal property – the Hill Boat – through the Ordinance and compensation is due in an amount of not less than \$70,000.
26. The Travis Property abuts Black Oak Lake in the Town of Land O' Lakes and the Travis' are a riparian owner on Black Oak Lake.

27. The Travis' own a boat – a 2019 Super Air Nautique (the “Travis Boat”) – which they use for wake surfing with family and friends on Black Oak Lake. The Travis Boat is designed to be used as a wake boat for wake surfing.
28. The Travis Boat is not transported from lake to lake during the summer season, is used exclusively on Black Oak Lake, and has not been and is not used on other lakes.
29. The Ordinance attempts to completely prohibit the ability of the Travis' to use the Travis Boat for its intended purpose and use – wake surfing.
30. The Travis' are damaged through the taking of their personal property – the Travis Boat – through the Ordinance and compensation is due in an amount of not less than \$120,000
31. Through the Ordinance's attempt to prohibit wake surfing – an otherwise legal and reasonable recreational use of the water in Wisconsin for riparian owners – the Town has deprived the Hills and Travis' of their rights as riparian property owners in the Town of Land O'Lakes.
32. “It is clear in Wisconsin that the mere fact that one owns property abutting a natural body of water presumptively confers certain rights.” *Mayer v. Grueber*, 29 Wis. 2d 168, 174, 138 N.W.2d 197, 203 (1965).
33. Riparian owners have “special rights to make use of water in a waterway adjoining an owner's property.’ They are the ‘bundle of rights’ that may be conferred upon a property owner by virtue of his contiguity to a navigable body of water.” *Movrich v. Lobermeier*, 2018 WI 9, ¶ 22, 379 Wis. 2d 269, 283-84, 905 N.W.2d 807, 813 (internal citations excluded).
34. The Claimants' riparian rights include “[t]he right to reasonable use of the waters for ... recreational purposes.” *Id.* at ¶ 22. Riparian rights include the right to use a body of water “for bathing, swimming and boating purposes.” *Bino v. Hurley* 273 Wis. 10, 16 (1956). Claimants' riparian rights are “substantial and valuable [] for which compensation must be given if the owner is to be deprived of [them].” A deprivation of riparian rights constitutes “the taking of property . . . without due process and without compensation. It violates the 14th Amendment of the Federal Constitution and the provisions of sec. 13, art. 1, Wisconsin Constitution.” *Id.*
35. Further, when regulating uses under the Public Trust Doctrine (enshrined in Article IX, § 1), “The uses must be balanced and accommodated on a case by case basis.” *State v. Vill. of Lake Delton*, 93 Wis. 2d 78, 96, 286 N.W.2d 622, 632 (Ct. App. 1979). The ordinance must, but does not, “confine[] its remedy to the precise outlines of the need addressed” and “[i]ts effect on the rights of others [i.e., Claimants]” is not negligible. *Id.* at 105-06.
36. A complete ban on a recreational boating activity, especially a ban that adversely impacts Claimants as riparian owners, is not a balancing or accommodation on a case-by-case basis and not one that is precisely outlined and narrowed.

WHEREFORE, the Claimants provide the following itemized statement and request the following itemized relief of and from the Town:

- A. A complete repeal of the Ordinance by no later than March 1, 2026;
- B. Enacting a moratorium on future wake surfing Ordinances that remains in effect until January 1, 2030;
- C. Payment of no less than \$70,000 to Hills for the loss and use of enjoyment of the Hills Boat.
- D. Payment of no less than \$120,000 to Travis for the loss and use of enjoyment of the Travis Boat.
- E. Nominal damages in the amount of \$1. *See Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021).
- F. Payment of Claimants' costs and attorney fees in an amount of not less than Forty Thousand and 0/100 Dollars (\$40,000.00).
- G. Other damages arising out of the Ordinance.

Claimants intend to commence an action arising under the Fourteenth Amendment to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C § 1983, and 42 U.S.C § 1988, and the Declaratory Judgment Act, 28 U.S.C. § 2201-2202 related to the Ordinance itself for violations of due process and equal protection, the federal claims of which are not subject to this Notice of Claim process and may be brought prior to a disallowance. *See Thorp v. Town of Lebanon*, 2000 WI 60, ¶ 21, 235 Wis. 2d 610, 624, 612 N.W.2d 59, 68 (notice of claim procedures in Wis. Stat. § 893.80(1) not required to bring federal constitutional claims under 42 U.S.C. § 1983).

Claimants also intend to commence an action for declaratory and injunctive relief declaring the Town's Ordinance as an unlawful exercise of the Town's authority under state statute, including, but not limited to, exceeding the authority granted under Wis. Stat. § 30.77; failing to follow all required statutory findings and/or steps to enact the Ordinance regarding by Wis. Stat. § 30.77(3); the Ordinance being inconsistent with portions of Wis. Stat. §§ 30.60 – 30.71; accordingly, violating Wis. Stat. § 30.77(1)(b) by prohibiting "any boat from the free use of the waters of this state or that pertains to the use, operation or equipment of boats;" the Ordinance being arbitrary and capricious; and the Ordinance being unconstitutional and a deprivation of Claimants' rights under the Wisconsin Constitution and other applicable rights established in common law including, but not limited to, Article IX, § 1 (Public Trust Doctrine), Article 1, § 1 (the equal protection clause), and Claimants' rights as riparian owners.

Claimants reserve the right to raise other claims, causes of action, as those claims, causes of action, and damages may come to exist or become known at a later date related to the Ordinance's passage.

Dated this 17th day of September, 2025.

WELD RILEY, S.C.

By: _____

John B. Wagman

WI State Bar # 1036178

Weld Riley, S.C.

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715-839-7786

Attorney for Claimants