

**WAUKESHA COUNTY
MINUTES OF THE PARK AND PLANNING COMMISSION
ADMINISTRATION CENTER, ROOM AC 255/259
THURSDAY, JUNE 17, 2021 - 1:00 P.M.**

CALL TO ORDER

Mr. Mitchell, Chairperson, called the meeting to order at 1:00 p.m.

Commission

Members Present: William Mitchell Robert Peregrine James Siepmann
Richard Morris William Groskopf

Members Absent: Thomas Michalski

Staff

Members Present: Jason Fruth, Planning and Zoning Manager
Ben Greenberg, Senior Planner
Kathy Brady, Support Staff Supervisor

CORRESPONDENCE: None.

MEETING APPROVAL: None.

MINUTES: Approval of the May 20, 2021, Minutes.

After discussion, Mr. Morris moved, seconded by Mr. Peregrine and carried unanimously for approval, of the May 20, 2021, as presented.

PUBLIC COMMENT: None.

• **Consideration of the Year 2021 Request for Amendment and Out of Sequence Requests to the Comprehensive Development Plan for Waukesha County**

• **2(B) Year 2021 Amendment to the Comprehensive Development Plan**

Joe and Sherry Garvens, W394N5298 Reddelein Road, Oconomowoc, WI 53066, request property located in part of the W ½ and the NE ¼ of Section 31, T8N, R17E, Town of Oconomowoc (Tax Key No. OCOT 0553.987), be amended from the Low Density Residential category (20,000 sq. ft. to 1.4 acres of area per dwelling unit) to the Mixed Use category to allow a commercial heating and cooling business.

Mr. Fruth indicated the public hearing for this amendment was held in February 2021 and action was delayed until now to allow the Town of Oconomowoc to act on the Town Plan amendment. The Town voted to approve the change to the Mixed Use category. He indicated the property is located on Reddelein Road, abuts the railroad corridor and contains a large pole type building on the property. In 1980, the Waukesha County Board of Adjustment granted a variance for the accessory building to be constructed on the parcel without a principal residence. Prior to the variance application being filed, in 1979, the property had been rezoned from the M-1 District to the A-1 District and later to the A-2 District. There were reports of a business being operated from the building and the Board of Adjustment's action did not allow for a business use of the building. A Deed Restriction was recorded disclosing that no business use of the property could occur, and the building was to be used for personal storage only. The Planning Staff learned that the business uses have continued via a fire inspection report and had been operating for some time, approximately 20 years without complaint. The owners asked how they could resolve the situation and

Planning Staff recommended amending the land use designation on the property as one option. A condition is being recommended stating that permissible uses are limited to residential and service oriented businesses.

Mr. Fruth said surrounding properties include a subdivision in the City of Oconomowoc to the northeast, other lands are in the Low Density Residential category to the west and environmental corridor/isolated natural resource area to the southeast. He noted that a small business is operated from the residential property directly across the street to the west. The surrounding areas are mostly rural/rural residential uses. He considered this a transitional area and the amendment is a spot plan amendment, as surrounding properties are mostly in the residential categories, however, close by, uses are becoming light industrial. He thought it was a bad decision by the Board of Adjustment in 1980 to approve the variance on the property, but what is done, is in the past. The Planning and Zoning Division staff feels that it is a reasonable time to revisit the plan designation.

Chairperson Mitchell stated that at the public hearing in February, Mr. Herro president of the nearby owner's association spoke in favor of plan amendment request. Mr. Groskopf asked if there was a recent Board of Adjustment variance request for the property? Mr. Fruth responded, "Yes," and added that the petitioners first applied for variances from the A-2 Rural Home District regulations of the Waukesha County Zoning Code in June 2020, to retain an existing heating and cooling business on a residentially zoned lot. The request was denied by the Board of Adjustment. The petitioners are now seeking a Town and County Development Plan amendment and a rezone to make the use legal without the benefit of a principal residence.

After discussion, Mr. Siepmann moved, seconded by Mr. Peregrine and carried unanimously for approval, as conditioned, in accordance with the "Staff Report and Recommendation". The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **4(A) Year 2021 Amendment to the Comprehensive Development Plan**

Ryan Janssen, P.O. Box 486 Mukwonago, WI 53194, representing property owned by TKS Corporation, 2310 Woodfield Circle, Waukesha, WI 53188, requests property located in part of the SW ¼, NW ¼ and SE ¼ of Section 35, T6N, R18E, Town of Genesee (Tax Key No. 1579.999), be amended from the Suburban II Density Residential (3.0 to 4.9 acres of area per dwelling unit) and the Rural Density and Other Agricultural Land (5.0 to 34.9 acres of area per dwelling unit or equivalent density) categories to the Suburban I Density Residential category (1.5 to 2.9 acres of area per dwelling unit), in order to allow for a residential subdivision.

Mr. Fruth indicated there is a large amount of natural resources on the property. He pointed out on the aerial photograph the location of the conventional lots being proposed (along Saylesville Road) and the large wetland complex which contains a fen. Since the public hearing there have been discussions with the petitioner and the plan has been revised to show the entirety of the fen being located on an outlot. In addition, the Waukesha County Land Conservancy (WCLC) has been in contact with the petitioner and they are willing to accept ownership of Outlot 1 to protect the designated natural area, but they would like to see the stormwater management facility be on a separate outlot and it would be required as part of the Stormwater Ordinance. He indicated these are positive design changes in order to protect the most sensitive part of the resources onto an outlot.

Mr. Fruth explained there would be a conservation easement on the 2 large lots (Lots 10 and 11) with the WCLC, so the entirety of the wetlands would be protected. He added that the WCLC would engage in stewardship, remove invasive species and ensure that the resource does not go away over time due to

lack of management. Surrounding land use designations include, Suburban II Density Residential to the northeast, Low Density Residential (½ acre density) to the north and west. Mr. Siepmann indicated he is a member of the WCLC and they met to discuss this property. He contacted the petitioner with the questions of the WCLC and noted that the petitioner has no issues with the conditions being advanced. He felt the newly revised layout was a better plan than originally submitted. He pointed to the removal of the wetlands off of some lots, the creation of easements on the back of Lots 10 and 11 and noted that the petitioner has agreed to mark the easement lines so the WCLC staff can monitor the easements once per year. In addition, the petitioner has agreed to provide stewardship monies to maintain them on a lot by lot basis, annually, \$200 per lot (\$3,000) plus \$1,000 for each of the 2 larger lots equaling \$5,000 per year.

Mr. Siepmann indicated he would need to recuse himself from this vote due to a conflict of interest.

After discussion, Mr. Morris moved, seconded by Mr. Peregrine and carried by a vote of 4 to 0 (Mr. Siepmann recused himself due to a conflict of interest), for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **1(B) Year 2021 Amendment to the Comprehensive Development Plan**

Mike Kaerek, Kaerek Homes, Inc., 11600 W. Lincoln Avenue, West Allis, WI 53227, representing property owned by Riteway Bus, LLC, W201 N13900 Fond Du Lac Avenue, Richfield, WI 53076, requests property located in part of the W ½ and NW ¼ of Section 2, T8N, R19E, Town of Lisbon (Tax Key No. LSBT 0150.997), more specifically, the property is located at N95 W23759 County Line Road, be amended from the Rural Density and Other Agricultural Land category (5.0 to 34.9 acres of area per dwelling unit or equivalent density) and Other Open Lands to be Preserved category to the Suburban I Density Residential category (1.5 to 2.9 acres of area per dwelling unit), in order to allow for a residential subdivision.

Mr. Fruth indicated the property is located on the county line, south of CTH Q and east of North Road in the Town of Lisbon and contains approximately 42 acres. The proposal would allow a 19 lot residential subdivision with lots approximately 1 acre in size with access from the west and a stub to the south. There is an area of wetlands in the northwest corner. Surrounding properties include a subdivision to the east and a few residential lots north of the property. As recommended, additional soil testing would be needed in the Other Open Lands to be Preserved areas.

After a brief discussion, Mr. Peregrine moved, seconded by Mr. Groskopf and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request, will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **CU53 (Tom and Mary Bachman Regency Builders) Town of Oconomowoc, Section 36**

Mr. Fruth pointed out the location of the property at W342 N5052 Road P in the Town of Oconomowoc on the aerial photograph. He indicated the request is for land altering activities associated with the construction of a single-family residence, attached garage, decks, patio, fire pit, pool and retaining walls.

Mr. Fruth indicated the property is located east of Road P, is approximately 2/3 acre in size with 100 ft of shore frontage on Okauchee Lake. The existing residence and garage is proposed to be razed and a new single family residence with attached garage, deck patio, fire pit, hot tub, and new/modified retaining walls. The existing boathouse would remain. There is a 25% slope on the property to the lake.

The series of retaining walls on the south side of the property would be modified, as currently they are 16 ft. in height with no vegetation. One of the 3 retaining walls in the series of 3, would be removed. The petitioners are proposing several outdoor living spaces (large series of patios and a raised surface to support a hot tub). The petitioners have proposed a small naturalized area and a lineal trench area to offset some of the grading and runoff. Recommended conditions include a shore buffer along the frontage less the access and view corridor (allowable up to 35% of the shoreline or 38 ft.) containing native plantings, etc. The access view corridor would need to be in vicinity of the existing boathouse. Other items being recommended include: a Stormwater Permit, screening of the retaining walls, a pending Certified Survey Map (CSM), deed restriction requirements, etc. Mr. Groskopf asked why a CSM is needed? Mr. Fruth replied the CSM relates to an internal lot line issue. He explained that without the mitigative practices, the Planning Staff would not recommend approval of the proposal because there is plenty of room to add a residence on the flat ground without a cut, the extra site amenities are driving the size of the footprint and there are alternatives to the grading on the site. The goal is to try to lessen the impacts, visual, aesthetic and environmental of the significant cut.

Mr. Siepmann clarified that if the upper retaining wall would be removed because of the exposure for the side of the residence, then would extensive vegetation be placed on the next tier down? He noted if this is done it would lessen the wall impacts. He suggested more plantings could be placed between the boathouse and the curve of the retaining wall to lessen the view lakeside. Mr. Fruth agreed that softening of the walls would be good for the south and north side of the property and would help the view from the lake.

Chairperson Mitchell asked the petitioner if they have reviewed the conditions of the staff recommendation? Ms. Bachman, petitioner, asked, referring to the additional buffer being recommended along the shoreline, if this was something they absolutely had to do because she felt they have done so much mitigation to accommodate for the project. In addition, there is nothing there right now and it is the only flat area they have for when family/guests come over by the lake. Mr. Fruth responded the recommendation from the Planning Staff does include a buffer. The Planning Staff is aware of the other practices proposed and some are potentially needed to satisfy the impervious surface requirements. As far as flat space goes, the submitted plans propose flat space for entertaining up on the top, and it is one of the driving factors of the application. The petitioner told the Planning Staff that the hot tub and patio were important to them. Planning staff feels that the desire for these accessory items on a sloping part of the lot is what necessitates offsetting mitigation. He noted that there is a boathouse in the shore buffer zone occupying some of the available flat space near the shore. Mr. Bachman, petitioner, stated they did not realize the boathouse was part of the 35 ft. viewing corridor. Mr. Fruth said the boathouse could always be removed if more green space was desired. Mr. Groskopf agreed with the Bachmans about the natural space by the lake and there would be a mowed area to another pier and felt there should be relief, possibly with the design of the buffer zone. Ms. Bachman said the neighboring properties are not required to do what is being asked.

Mr. Fruth explained that the Comprehensive Development Plan (CDP) calls for preservation of steep slopes (anything 12% or greater). There is a 25% slope that is being disturbed to place a hot tub and extensive patio systems. The Commission is being asked to deviate from what the CDP and zoning ordinance recommends for preservation of slopes. The south slope has been extensively altered and by removing the top retaining wall and doing it a different way, there are positive aspects of the plan. However, it is very difficult to justify the slope disturbance that is being proposed. The lot is large and if the hot tub was not proposed on the slope, the footprint could be slid to the east and there could be more relief available to take advantage of a natural exposure. The Planning Staff feels it is important to

figure out some way to mitigate those impacts. This is a major grading proposal on a steeply sloping lakefront property and there would be a 35 ft. vegetative buffer zone, as recommended. The access and view corridor is a state standard. He said another option is that the garage could be made smaller and there would be room for recreation in that area. Mr. Groskopf asked if there was an impervious surface number, to which Mr. Fruth replied that the basic requirement is 15%, however, the petitioners noted that they are in a 30% maximum area. Mr. Bachman stated the buffer strip behind the wall near the shore and infiltration trench is extra which wouldn't have been required. Mr. Groskopf suggested to leave it on the upper side of the retaining wall but still give them a pathway to another pier area. He asked if the petitioner could have an additional pier and grass path to the pier? Mr. Fruth replied, the access path should be within the access and view corridor. Mr. Fruth said the access and view corridor percentage could be split and not located in the same area. One path could come down and split 2 ways.

Mr. Siepmann said he did not oppose splitting the buffer area and have the Planning Staff work with the petitioner to move the main pathway from the residence, closer to the boathouse, so it could be in the access/view corridor along with the boathouse and they could split off and get a flat area of green space for the second pier. Turfgrass was discussed for the connected accessways. Mr. Siepmann suggested adding a sentence to Condition No. 2 stating that "Two (2) paths to piers may be permitted provided that the two (2) accessways are connected only via turfgrass and that the "split" access and view corridors do not exceed 35% of the shore frontage" to which the Commission agreed.

After discussion, Mr. Siepmann moved, seconded by Mr. Peregrine and carried unanimously, for approval, as conditioned, in accordance with the "Staff Report and Recommendation" with a revision to Condition No. 2 which will now read:

- 2. In order to offset the impacts of the proposed grading, the owner must implement a shore mitigation plan to be reviewed and approved by the Waukesha County Planning and Zoning Division. The plan shall include a vegetative shore buffer. The vegetative shore buffer ("Mitigation Area") shall extend across the entire shore with the exception of an Access and Viewing Corridor which may be a maximum width equal to 35% of the total shore frontage. Two (2) paths to piers may be permitted provided that the two (2) accessways are connected only via turfgrass and that the "split" access and view corridors do not exceed 35% of the shore frontage. The Mitigation Area may incorporate other elements to treat impervious surface, such as a rain garden. The Mitigation Area shall extend from the Ordinary High Water Mark of Okauchee Lake to the location of the existing 4' retaining wall, approximately 33' deep, in the area parallel to the shore. The Mitigation Area shall include, at a minimum, a mix of perennial vegetation that is native to Wisconsin. The species mix and planting densities shall be in accordance with the WDNR Biotechnical Note 1. If there are any existing trees or native vegetation located within the required Mitigation Area, the location, size and species of all such trees shall be identified on the mitigation plan and said trees/vegetation must remain as part of the mitigation plan. The mitigation plan shall not propose any fill within the 100-year floodplain. The mitigation plan must include a timetable for completion. The shore mitigation plan must be implemented and the site stabilized within 18 months of the date of Zoning Permit issuance, unless extended by the Planning and Zoning Division for just cause.*

The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **CU56 (Tamara Marek Revocable Trust) Town of Merton, Section 27**

Mr. Fruth pointed out the location of the property at N63 W30723 Fairwater Lane in the Town of Merton on the aerial photograph. He indicated the request is for land altering activities associated with the construction of a single family residence with attached garage, deck, inground swimming pool and retaining walls.

Mr. Fruth indicated the proposed request is to create an area of fill, approximately 7 ft. max. depth to achieve a driveway. He noted the lake owners located to the south along Beaver Lake have historically had drainage problems. During the development review concepts for the subdivision, the Waukesha County Land Resources Division indicated there was an opportunity during the development of this site to fix drainage problems in the area and property owners have confirmed that drainage has improved. Mr. Fruth added that a 1 ft. berm needs to be created on the southwest lot line, which would direct drainage to the stormwater pond, in compliance with the Master Grading Plan.

Mr. Morris said this proposal has been heard several times at the Town and the position of the house and garage was shifted to reduce the north slope which allows for an adequate drainage area on the north side and would not create adverse drainage on the adjacent parcel. Mr. Siepmann said since the house sits higher on top, the largest impacts are from the slope to Shore Acres Road. He asked how the slope would be vegetated from the driveway down to Shore Acres Road? Mr. Schattner indicated it would be all grass and the water would be diverted directly south and would hit the berm and avoid going into the wetland area so there is no flooding and directed into the pond. Mr. Siepmann expressed concerns that the slope would be all grass and thought it would be better if it was softened to take away the slope. He asked if a condition could be added that a landscaping plan for the buffer be part of the approval? Mr. Fruth mentioned on the western part of the lot there is a tree preservation area (approximately 20 ft. wide). He asked for direction from the Commission as to what type of plantings they would like to see. Mr. Siepmann said it could be a mixture/combination of trees/evergreens/shrubs to soften the slope. He sketched on Exhibit B the area of concern. Mr. Schattner stated that he had not seen a landscaping plan yet and if the condition was required, could it be subject to the Planning and Zoning Staff review and approval as part of the Conditional Use Permit. The Commission agreed.

After discussion, Mr. Siepmann moved, seconded by Mr. Morris and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation” with an added Condition No. 7 which will read:

- 7. A Landscape Plan shall be prepared for the area downslope of the proposed driveway as sketched during the Park and Planning Commission meeting of June 17, 2021. The plan shall include a mix of trees and shrubs and said plan shall be subject to the review and approval of the Waukesha County Planning and Zoning Division.*

The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **PPC21 007 (James Swentik) Town of Merton, Section 31**

Mr. Fruth pointed out the location of the property at W339 N4995 Road O in the Town of Merton on the aerial photograph. He indicated the request is to approve a retaining wall located within 5 ft. of the north property line.

Mr. Fruth indicated the existing timber retaining wall on the north side of the property is failing and would be replaced with a new block wall in the same footprint.

After a brief discussion, Mr. Peregrine moved, seconded by Mr. Morris and carried by a vote of 4 to 0 (Mr. Groskopf recused himself due to a conflict of interest) carried unanimously, for approval, in accordance with the “Staff Report and Recommendation”. The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **PPC21 008 (Matt and Sandy Vogen) Town of Oconomowoc, Sections 35 and 36**

Mr. Fruth pointed out the location of the property at W351 N5325 Road C in the Town of Oconomowoc on the aerial photograph. He indicated the request is to approve a retaining wall within 5 ft. of eastern property line.

Mr. Greenberg indicated the petitioners recently obtained variance approval to construct a new attached garage but were denied the retaining wall. The Shoreland Ordinance allows for the replacement of a legal non-conforming wall in-kind. There is an existing failing retaining wall consisting of a 32 in. foundation wall which extends across multiple parcels and an 8 in. retaining wall that sits on top of the foundation wall supporting a parking area. The petitioners are requesting to replace the failing retaining walls in-kind. A safety railing will be installed along the wall.

After a brief discussion, Mr. Peregrine moved, seconded by Mr. Morris and carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

• **PPC21 009 (Steven and Mary Nachreiner Rev. Trust) Town of Merton, Section 9**

Mr. Fruth pointed out the location of the property at W317 N8491 State Highway 83 in the Town of Merton on the aerial photograph. He indicated the request is to approve a remnant parcel not shown on a plat.

Mr. Greenberg explained the request is related to a subdivision plat submittal for Legacy Hills Subdivision which would contain 4 single-family lots. The 16 acre parcel has a small waterway running north to south on the property. The lots would be located east of the waterway. The developer requested the possibility of excluding the lands west of the waterway from the plat and ways to go about that. The developer was trying to mitigate the costs associated with including the acreage to the west on the plat as an outlot. The petitioner is creating a number of lots for his children and all would be located on the eastern part of the property. Mr. Siepmann stated he had been involved with the design for the subdivision plat and said he would need to recuse himself from the vote.

After discussion, Mr. Morris moved, seconded by Mr. Groskopf and carried by a vote of 4 to 0 (Mr. Siepmann recused himself due to a conflict of interest) carried unanimously, for approval, as conditioned, in accordance with the “Staff Report and Recommendation”. The approval of this request will allow the petitioners a reasonable use of their land and meets the intent and purposes of all County Ordinances.

ADJOURNMENT

With no further business to come before the Commission, Mr. Siepmann moved, seconded by Mr. Peregrine to adjourn the meeting at 2:20 p.m.

Respectfully submitted,

Thomas Michalski

Thomas Michalski

TS:kb